

## Construction and Surety

Today's construction professional faces a myriad of complicated issues, from complex contracting and government regulations to sophisticated financing and high stakes litigation.

Our lawyers understand that a construction project has multiple moving parts, and each component must come together in order for the project to be a success. We also understand that, at times, problems such as contract defaults and terminations, delays and interferences, and bodily injury and property damage claims can create problems along the way.

Keeping these challenges in mind, our lawyers utilize their experience and knowledge to achieve the best possible solution for our construction industry clients. We treat every case as if it will actually go to trial. In this manner, we identify early on what are our client's greatest strengths and possible weaknesses. This approach allows us to achieve the best possible results, whether it's settling a case or going to trial.

What all of our various construction-related activities have in common is our commitment to aggressive and creative representation and sensible, experienced staffing, with the goal of achieving optimal results at reasonable cost to our clients.

We regularly represent owners, general contractors, subcontractors, building component manufacturers, lenders, borrowers, architectural and engineering firms and insurance and surety companies in a wide array of construction-related matters, including:

- contract drafting and negotiation
- construction management and project administration
- construction defect litigation
- claims litigation and arbitration
- all methods of alternative dispute resolution, including mediation.

### Construction Litigation

Our experience in the area of construction defect litigation is nationally recognized by our clients. Our group's construction claims experience includes litigating delay and disruption, inefficiency, defective design, extra work, and loss of business claims in federal and state courts and in arbitration on behalf of owners, contractors, subcontractors, sureties and design professionals. Whether it's representing real estate developers or contractors in property damages cases

### PRACTICE CONTACTS

Michelle D. Coburn, Co-Chair  
215.864.6355  
coburnm@whiteandwilliams.com

William J. Taylor, Co-Chair  
215.864.6305  
taylorw@whiteandwilliams.com

David D. Gilliss, Partner  
443.761.6508  
gillissd@whiteandwilliams.com

### RELATED PRACTICES

Catastrophic/Excess Liability  
Commercial Litigation  
Product Liability  
Professional Liability  
Real Estate  
Toxic Torts and Environmental

### RELATED INDUSTRIES

Financial & Investment Services  
Healthcare  
Insurance

### PRACTICE HIGHLIGHTS

- Our lawyers have years of experience handling construction litigation, surety and SDI matters, and construction-related transactions.
- We represent a wide array of clients in the construction industry, including owners, contractors, design professionals, manufacturers, insurers and surety companies.



brought by property owners alleging construction defects and component products, or serving as oversight counsel for insurance clients in construction defect cases, we have earned a reputation for identifying and controlling litigation costs, developing methods for early resolution of cases, identifying cases that are not being resolved in a timely manner, and otherwise dealing with special cases and special problems for our client.

We have tried cases throughout the country on behalf of contractors, subcontractors, and manufacturers of construction equipment involved with construction-site accidents that have resulted in major property loss and serious personal injuries. We have also regularly represented commercial property owners, real estate developers and insurance companies in litigation arising out of the alleged presence of mold and related indoor air quality issues.

We are well-versed in the filing, prosecution and defense of mechanics liens and lien foreclosures. We are also experienced in all forms of alternative dispute resolution, which is being utilized more often to resolve today's construction disputes.

Our lawyers often instruct owners, developers, construction managers and product manufacturers on such topics as loss prevention and anticipating, avoiding and handling claims.

### Construction Transactions

We also have considerable experience representing various parties to major construction projects with needs such as drafting and negotiating construction contracts between owners, contractors, subcontractors, architects and engineers, financing agreements between lenders and borrowers and leasing agreements between landlords and tenants. We are licensed users of the AIA construction contract document software, which allows us to draft construction agreements quickly and efficiently.

We have negotiated workouts and have represented our clients in insolvency proceedings such as creditors' compositions and bankruptcies.

Our transactional experience includes projects financed by both private lenders and government agencies.

Our attorneys have advised insurance companies and their insureds on construction-related coverage issues arising under various types of policies, including general liability and builder's risk policies.

### Surety and Fidelity

In addition to our litigation work, our lawyers have a wealth of experience in the surety and fidelity field. We represent numerous surety clients in regard to all aspects of suretyship, including drafting and enforcing indemnity agreements and equitable subrogation rights, managing defaults and takeover situations, and defending payment and performance bond claims and bad faith claims against sureties. As part of our fidelity practice, our lawyers have litigated claims involving check forgery, check kiting and other claims brought under financial institution and fiduciary bonds and commercial crime coverage policies.

### REPRESENTATIVE MATTERS

Represented a general contractor and its payment bond surety in the defense of a multi-million dollar Miller Act claim brought by a subcontractor on a federal dam project on the Colorado River, and thereafter successfully prosecuted a claim on behalf of the GC and the subcontractor in the United States Court of Federal Claims against the Department of the Interior for extra work, unpaid contract balances and inefficiencies

Won a \$13 million arbitration award in prosecuting on behalf of the owner of a hotel/casino in Atlantic City its delay and loss of business claims against the contractor following the delayed opening of a major expansion project

Defended a local municipal utility authority against multi-million dollar delay, disruption and differing site condition claims by the contractor on the expansion of a huge wastewater treatment plant

Defended the Pennsylvania Department of Transportation (PennDot) regarding delay, disruption, extra work and liquidated damages claims by and against the contractor for the renovation of the I-76 Schuylkill Expressway

Defended the developer and general contractor in litigation in Baldwin County, Alabama involving multiple construction defect claims in five high-rise condominium buildings in Gulf Shores and Orange Beach, Alabama, successfully resolved a middle eight-figure case for a fraction of claimed damages, and secured substantial contributions from subcontractors, design professionals and manufacturers

Successfully represented the contractor before the District Court and the Third Circuit Court of Appeals in the leading case applying Pennsylvania law on indemnity and an additional insured's rights, in which the court ruled that a construction company, initially denied coverage by a subcontractor's insurance company, was entitled to coverage and counsel fees before the underlying case was resolved

Served as the litigation consultant to our insurance company client's local counsel in Austin, Texas for two years in defending a first-tier subcontractor in a multiple construction defect claim involving an entire townhouse condominium neighborhood

Successfully resolved a nine-figure claim for alleged construction and window defects after the plaintiff had already prevailed in a claim handled by another firm

Successfully negotiated the dismissal of a general contractor in a complex claim for construction defects, soil engineering claims and related coverage issues involving construction of a medical supplies warehouse and pharmacy facility for the University of Pittsburgh Medical Center

Served as our insurance company client's oversight counsel and negotiator in a 12 neighborhood, multi-defect construction defect lawsuit in Winter Park, Florida, resolving middle eight-figure claims against the insurer of the developer and general contractor

Represented a general contractor and an owner in Philadelphia, Pennsylvania in claims for contract and negligence damages brought by neighboring property owners who suffered cracking and collapse of portions of their foundations during site excavation and construction of a 170-unit mixed-use development in the Old City section of Philadelphia.

Won a \$39 million indemnity judgment on behalf of a surety in federal court in Connecticut arising out of a default termination on a multi-million dollar stadium construction project, and defeated counterclaims for bad faith, breach of contract, tortious interference, and unfair trade practices

Defended a surety against a multi-million dollar performance bond claim asserted by a GC on a Department of Defense project in Alaska, with the matter being resolved with no payment by the surety and complete reimbursement of all of the surety's costs and expenses, including attorney's fees

Represented a surety in the defense of two million dollar performance and payment bond claims asserted against the surety and its subcontractor principal in the Philadelphia County Court of Common Pleas in regard to the construction of a large, multi-use apartment complex in Philadelphia. The matter was successfully settled with no payment by the surety

Won a significant trial verdict in defending a surety on bond and fraud claims and prosecuting the affirmative delay and disruption claims of the surety's electrical subcontractor principal regarding the construction of a major hotel project in Times Square, New York City

Defended two American surety companies against multi-million dollar bond claims regarding the construction of off-shore oil production and storage platforms in Brazil, involving litigation in federal and state courts in New York and in Brazil

Successfully resolved multiple claims asserted against a commercial surety arising out of public official bonds issued on behalf of a defunct tax collection agency in Pennsylvania

Represented a Philadelphia-based surety company on performance bond claims and related indemnity claims involving the multi-million dollar expansion of a retirement community in Philadelphia's suburbs

Prosecuted on behalf of the surety a large indemnity claim following the resolution of multiple claims arising out of the construction of two luxury condominium projects in Philadelphia

Prevailed on summary judgment in an action against an indemnitor's secured lender as to the surety's equitable subrogation rights to contract funds after paying a payment bond claim

Represented a European surety, in regard to bonds written in Germany, on indemnity claims against a bankrupt American corporation and an insolvent American insurer. After litigation in Texas and New York, we obtained over \$13 million for our client, after the client had previously decided that the prospects for recovery were hopeless

Represented a surety in an action on an agreement of indemnity to recover the amounts paid by the surety in settling a performance bond claim. By a motion for summary judgment, we overcame the indemnitors' arguments that the surety was not entitled to any recovery because its settlement of the performance bond claim was not made in good faith

Successfully represented a surety in an action against an owner who released contract funds without the surety's consent. This release of funds deprived the surety of its interest in the contract funds, which would have reimbursed the surety for claims that it had to pay against its payment bond. The owner was required to pay to the surety that amount that it had released to the surety's principal without the surety's consent

Represented the developer and operator of numerous assisted living facilities in Pennsylvania, New York, New Jersey, Delaware, Connecticut, Virginia and Maryland, including the negotiation and drafting of purchase and sale agreements, condominium documents, financing documents, and construction contracts for the client's various facilities

Drafted, on behalf of an owner/developer in Bryan, Texas, all necessary construction agreements with the replacement contractor following the default/termination of the original contractor

Drafted all construction contracts, on a nationwide basis, for the largest distributor of industrial, medical, and specialty gases and related equipment in the United States

Represented an American engineering and specialty construction firm in contract drafting and negotiations with the government of the Ukraine for the multi-million dollar, high profile permanent remediation of the Chernobyl nuclear disaster site

Represented an engineering and construction firm in contract negotiation and disputes with subcontractors and with public utility owners for multi-million dollar installation and refurbishment of hydro-electric power plants around the country and abroad

## CASES & DEALS

Second Circuit Court of Appeals Affirms Summary Judgment in Favor of Arch Insurance Company  
5.12.21

Construction Group Wins Final Judgment on Indemnity Claims and Defeats Bad Faith Claims  
7.19.19

## NEWS

Best Lawyers® Recognizes 45 White and Williams Lawyers  
*Firm News*, 8.18.23

White and Williams recognized with Multiple Honorees in the Chambers 2023 USA Guide  
6.9.23

Congratulations to all of our 2023 Attorneys Named as Super Lawyers and Rising Stars  
5.25.23

Best Lawyers® Recognizes 40 White And Williams Lawyers  
*Firm News*, 8.18.22

White and Williams LLP Acquires 6 Attorney Firm  
8.2.22

White and Williams Announces 15 Lawyer Promotions  
1.3.22

White and Williams Ranked in Top Tiers of "Best Law Firms"  
11.5.21

Best Lawyers® Recognizes 38 White and Williams Lawyers  
8.19.21

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2021  
11.5.20

Edward Beitz and William Taylor Recognized by US News – Best Lawyers as a "Lawyer of the Year"  
8.20.20

Introducing the C-PACE Webinar Series  
Presented by White and Williams LLP and CounterpointeSRE  
3.12.20



13th Annual Coverage College Hosts Over 400 Insurance Professionals

11.1.19

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2020

11.1.19

*Best Lawyers*® Recognizes 29 White and Williams Lawyers

8.15.19

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2019

11.1.18

12th Annual Coverage College Features Current Trends and State of the Insurance Claims Industry

10.23.18

*Best Lawyers* Recognizes Twenty White and Williams Lawyers

8.15.18

White and Williams Earns National "Best Law Firm" Rankings from US News

11.1.17

Bill Taylor Co-Authors Chapter in Pennsylvania Construction Law Book

10.23.17

*Best Lawyers* Recognizes Fifteen White and Williams Lawyers

8.15.17

White and Williams Earns Tier 1 Rankings from U.S. News "Best Law Firms" 2017

11.1.16

Coverage College Celebrates Its 10th Anniversary

9.22.16

*Best Lawyers* Recognizes Twelve White and Williams Lawyers

8.15.16

White and Williams Announces the Election of Five Lawyers to the Partnership and the Promotion of Five Associates to Counsel

1.14.16

The Ninth Annual Coverage College Features True-to-Life Case Study

10.8.15

White and Williams Lawyers Recognized by *Best Lawyers*

8.17.15



## PUBLICATIONS

Appellate Court of Maryland Construes Notice Conditions of A312 Performance Bond in Favor of Surety  
11.16.23

Ambiguity in Pennsylvania's Statute of Repose Finally Cleared up by Superior Court  
*Construction and Surety Alert*, 9.6.23

Replevin Actions: What You Should Know  
*Construction and Surety Alert*, 10.25.21

Five Frequently Overlooked Points of Construction Contracts  
*Construction and Surety Alert I*, 9.24.21

Social Media in Litigation: The Increasing Impact and Evolving Standards for Discoverability and Admissibility  
*Litigation Alert*, 3.28.18

Construction Mezzanine Financing  
*Finance Alert*, 3.29.17

Lessee Deemed Statutory Employer, Immune from Tort Liability by Pennsylvania Court  
*Construction and Surety Alert*, 11.2.16

Pennsylvania Supreme Court Dismisses Appeal of Attorney Fee Award Under the Contractor and Subcontractor Payment Act  
*Construction and Surety Alert*, 1.7.16

Delaware State Court Holds that Defective Workmanship Claims do not Trigger Coverage by a Builder's Commercial General Liability Policy  
*Insurance Coverage Alert*, 4.3.15

## EVENTS

Trends in Surety Underwriting  
Philadelphia Surety Claims Association Luncheon, 11.17.21

C-PACE for Green Roofs & Renewables in Philadelphia and Pennsylvania  
5.12.20

C-PACE for New Construction/Repositioning  
Webinar, 4.14.20

C-PACE 101: An Introduction to Philadelphia and Pennsylvania Programs  
Webinar, 4.7.20

East Coast Meets West Coast – Hot Construction Defect Issues and Coverage Cases from the Other Coast  
2018 West Coast Casualty Construction Defect Seminar (Anaheim, CA), 5.16.18

125<sup>th</sup>  
ANNIVERSARY

White and  
Williams LLP

Construction and Surety

What's Hot in Coverage: A Survey of the Latest and Greatest in Construction Coverage  
2nd Annual Construction Defect, Claims Litigation and Strategies ExecuSummit (Uncasville, CT), 12.5.17

Mechanic's Lien Law Breakfast and CLE  
Montgomery County Development Corporation (Bala Cynwyd, PA), 7.20.17

Surety Bonds v. SDI - Who's Going to Cover Your Construction Project?  
White and Williams Coverage College, 9.22.16

