

# Construction Law

For more than 40 years, Cozen O'Connor's Construction Law Group has represented many of the biggest names in the construction industry on some of the most significant projects throughout the United States and around the world.

We don't just know construction law, we know the industry, the various players, the economics, culture, issues, and stumbling blocks. Leveraging that skill set, our team offers clients cost-efficiency, creativity, and solutions that work. Our forward-thinking attorneys help shape the industry, empower our clients, and advance their projects, from creation through contract negotiations, development, and project completion. Experienced at every stage, we are passionate about the work we do, driving progress, overcoming hurdles, and guiding clients through the ever-evolving landscape of construction law.

## Uncommon Experience

Our Construction Law team advises owners, developers, contractors, construction managers, architects, engineers, subcontractors, and suppliers on large-scale infrastructure and commercial real estate projects, from roads, bridges, railways, and airports to mixed-use developments, health care facilities, and data and distribution centers.

Combining uncommon industry experience, legal knowledge, and litigation skills, Cozen O'Connor's Construction Law team partners with our clients to identify and mitigate risk. We tackle complex legal issues employing strategies based on each client's goals and needs, guiding our clients' projects to successful completion. When disputes arise, our team resolves them before regulators, in public forums, in court, in alternative dispute forums worldwide, and at the negotiating table.

In working with our clients, first we gain a clear understanding of what success means to each client, their goals and objectives. Then, we roll up our sleeves, dig in, and get the job done, anticipating problems, recommending creative solutions, and structuring practical agreements. Whatever their goal, we help our clients optimize efficiency, reduce costs, respond decisively, and communicate effectively with all parties, from ironworkers and masons to executives, engineers, and experts. Throughout every phase of a project, our team works to help clients optimize efficiency, reduce costs, and complete their projects on time.

## Leaders in the Field

With more than 60 lawyers practicing in 11 offices throughout the U.S., Cozen O'Connor's Construction Group has the depth and geographical reach to handle any matter. Our construction lawyers are in the field, on work sites, in boardrooms and courtrooms, offering guidance grounded in decades of immersing ourselves in our clients' projects. Our group includes former design professionals, engineers, construction company managers, and executives. We offer far more than knowledge of the law. Our team provides first-hand experience and an insider's perspective into the industry and the issues our clients face.

We have earned a national reputation for skill and tenacity in courts and hearing rooms with lawyers ranked nationally by leading organizations and peer-reviewed publications, including the American College of Construction Lawyers, Chambers USA, U.S. News/Best Lawyers, and The Legal 500. Law360 has repeatedly recognized the Construction Group as a Practice Group of the Year, and our Construction Group is co-chaired by one of the few construction litigators ever invited to be a fellow of the American College of Trial Lawyers.

## Projects, Development and Industries Experience



**Bruce W. Ficken**  
Co-Chair, Construction Law

b ficken@cozen.com  
Phone (215) 665-6948  
Fax (215) 665-2013



**Raymond L. DeLuca**  
Co-Chair, Construction Law

r deluca@cozen.com  
Phone (215) 665-6945  
Fax (215) 665-2013

### Related Practice Areas

- Commercial Litigation
- Infrastructure
- Italy Practice
- Product Liability
- White Collar Defense & Investigations

### Industry Sectors

- Real Estate & Construction

We provide project counseling, handle transactions-related work, and are highly experienced in all forms of dispute resolution across a broad array of projects for clients in wide-ranging industries including:

- Commercial and residential construction
- Power, energy, and utility
  - Power plant construction
  - Renewable energy, including solar, hydroelectric, onshore and offshore wind, and LNG facilities
  - Wastewater treatment plants
- P3s, government, and public contracting
- Industrial and manufacturing
- Infrastructure, including heavy highway, aviation, and transportation
- Mining
- Education
  - Public and private school projects (K-12)
  - Colleges, universities, and higher education
- Health care, including hospitals, health care facilities, assisted living, and life sciences
- Sports, gaming, and entertainment
- Hospitality and retail

## The Work We Do

### Advisory and Transactions

The foundation of any successful construction endeavor lies in well-crafted contracts. With a deep understanding of the industry, we create contracts that protect our clients' rights, manage risk, and foster productive relationships. We communicate clearly with all parties and negotiate contracts with precision, ensuring fair terms and efficient project execution.

### Dispute Resolution

With myriad moving parts, competing goals, budget constraints, complexities, and large teams involved in construction projects, disputes will often arise. When they do, our team handles them effectively and efficiently to keep projects on track. We listen to clients' specific needs because a "win" can mean different things in challenging construction and legal environments.

Our team's trial lawyers handle domestic and international construction disputes, including litigation in state and federal courts, mediation, and arbitration in U.S. and international forums. Some team members serve as arbitrators deciding construction cases and bring a broad perspective to our clients' arbitrations.

In particular, we are known for our dispute resolution work on large infrastructure projects and have successfully resolved multi-million dollar cases in the U.S. and throughout the world. In addition, the team has extensive P3 experience, including one of the largest P3 cases in the United States.

When litigation is necessary, Cozen O'Connor's construction litigators are trial-ready advocates — often a deciding factor in a case's resolution. No one wants to go to trial, but our experience has shown that sometimes the best way to resolve a dispute is to be ready to try it.

### Renewable Energy

Cozen O'Connor serves national and international clients on cutting-edge and emerging sector

renewable energy construction projects from conception, permitting, regulatory approvals, and compliance to construction, operation, and exit. We are experienced in a wide variety of areas, including off- and onshore wind, solar and photovoltaic, hydroelectric, biomass and biofuels, battery storage, and other renewable energy projects.

## Full-Service Capabilities and a Global Reach

The Construction Group has extensive experience in transactional work for developers and owners on a vast array of projects worldwide. Our work spans the United States, Mexico, the Caribbean, the Middle East, the UK, Europe, South America, and Asia.

Our construction clients benefit from experienced and integrated public and private finance, corporate, bankruptcy, environmental, labor and employment, intellectual property, government relations, data privacy, renewable energy, and white collar practices, among others. In addition, the firm's nationally recognized insurance team regularly advises construction industry leaders on alternative insurance coverage programs, liability and risk, coverage issues, and claims.

## List of Services

Our services include:

### Project Development

- Counseling on project delivery systems, contracting forms, and pricing structures
- Preparation of bid documents
- Project risk evaluation and review
- Counsel on forms of insurance
- Formation of owner- or contractor-controlled insurance programs, and captive insurance programs
- Counsel on forms of security, including performance and payment bonds, subcontractor default insurance (Subguard™), and letters of credit
- Drafting and negotiation of prime contracts (including design-build, EPC, CM at risk, cost reimbursable, and other forms of contract), subcontracts, and purchase orders

### Project Counseling and Dispute Avoidance

- Project counsel services, supporting the project team during the post-award, execution phase of the project.
- Claim evaluation, preparation and defense
- Contract, change order, and claim review
- Project monitoring and assistance with early claim resolution
- Client education and training programs, including contract training at the start of the project
- Preparation of template notices, letters and timelines for use by the project team

### Litigation/Alternative Dispute Resolution (ADR)

- Dispute Review Boards (DRBs) and Dispute Adjudication Boards (DABs)
- Statutory adjudication
- Mediation
- Arbitration (AAA, JAMs, CPR, statutory/court-ordered, and ad hoc)
- International Arbitration (ICDR, CPR, ICC, LCIA, and ad hoc)
- State and federal court arbitration

### Legal Issues/Claims

- Breach of contract and contract interpretation
- Defective specifications and design

- Construction defects and failures (including water intrusion claims)
- Change orders and claims
  - Differing site conditions, changed conditions, and changed standards
  - Delay, disruption, acceleration, inefficiency, and interference claims
  - Out of scope extra work
- Payment disputes
- Bid, payment, performance, and other surety bond claims
- Insurance, CCIP/OCIP, and Subguard™ claims.
- Mechanic's liens
- Defaults and terminations
- OSHA and Americans with Disabilities Act (ADA) compliance

## Experience

Secured a favorable jury verdict for a client working as a subcontractor to a multibillion-dollar design and construction firm on a 60-unit wind turbine complex in Illinois. The case centered on the termination of the subcontract during the project, and the trial was before a jury in the U.S. District Court for the Northern District of Illinois — on damages only — after the Court found the subcontract had been terminated properly for cause. The issue presented to the jury was the amount of damages owed to the general contractor following the subcontractor's termination. Although the general contractor sought more than \$30 million in damages, the jury awarded the general contractor only one dollar.

Negotiated a favorable settlement with the U.S. Navy in a case we took over from another law firm on behalf of a full-service general contractor in a dispute relating to delays in a large repair and refurbishment project. The matter involved claims of defective specifications in which the work of removing decades-old coatings ("paint") from the structure of the building and reapplying a modern coating were delayed for years and took much longer than anticipated or allowed for in the contract.

Won summary judgment on behalf of a construction company and its owner in a prevailing wage and retaliation case brought by seven individual plaintiffs who alleged they were not paid properly on a number of construction projects in and around Washington, D.C., Maryland, and Virginia and that they were improperly terminated after they purportedly inquired about the applicable prevailing wage rates for the projects.

Represented the lender of a \$340 million construction loan financing for a mixed-use hotel condominium project in downtown Miami. The 50-story project is slated to include a 219-room hotel with 310 residential condominium units above the hotel portion, as well as ground-floor retail space that will include five restaurant and bar areas.

Prosecution of private developer's claims in excess of \$100 million arising out of rebuilding of the World Trade Center towers in New York City following the 9/11 attacks and stemming from public entity's delays in turning over the project site. Arbitration resulted in an award in excess of \$140 million.

Defense of concrete contractor in connection with the tragic collapse of the Tropicana parking garage in Atlantic City, N.J., both in OSHA proceedings and in extensive multi-party litigation in state court. Following mediation, all matters were settled.

Prosecution of claims and defense of \$50 million counterclaim on behalf of a major Chicago general

contractor and six subcontractors arising out of the condominium conversion and upgrade of the historic Palmolive Building in downtown Chicago. Arbitration resulted in the dismissal of the developer counterclaim, a near full award, and the award of costs and attorneys' fees to the general contractor.

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Prosecution of natural gas transmission pipeline contractor's claims for contract balances and wrongful termination damages arising out of pipeline project in Pennsylvania, which, following a four-week jury trial, resulted in dismissal of owner's \$21 million counterclaim, an award to contractor of the full amount of its claims in excess of \$23 million, plus statutory interest and penalties at a rate of 24 percent per annum, and attorneys' fees.

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Defense of national developer and homebuilder in connection with multiple construction defect claims in excess of \$320 million in the aggregate relating to water infiltration and other building envelope issues.

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Drafted and negotiated construction management agreement for new \$300 million hospital in New Jersey.

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Drafted and negotiated design/build agreement for new \$160 million regional distribution center in Pennsylvania and provided project counseling and defense of subcontractor claims.

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Defense of design professional/construction manager against \$50 million professional liability claim arising out of design and construction of an elevated light rail line in Philadelphia, Pa.

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Prosecution of design professional's claims in the amount of \$32 million for extra work, delays, and disruptions arising out of design and construction of \$10 billion tunneling project in New York City.

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Drafted various agreements and counseled pharmaceutical client concerning its \$1 billion biopharmaceutical facility in Ireland.

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Prosecution of private owner's claims exceeding \$4 million and defense against EPC contractor's claims in excess of \$8 million arising out of the design and construction of natural gas pipeline in Mexico.

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Presenting and defending claims on behalf of prime design/builder in a dispute arising out of the design and construction of the U.S. Government Mission in Taipei, Taiwan, between an American design builder and a Taiwanese partnership, accused of abandoning the work and delaying the job. Following a bifurcated international arbitration, all issues of liability were resolved in favor of the design/builder and the matter was settled.

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Drafted and negotiated construction and design services contracts for projects located throughout the United States on behalf of international direct-to-consumer retailer headquartered in Pennsylvania and its affiliated companies.

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Drafted and negotiated an \$80 million guaranteed maximum price agreement in connection with the construction of a mixed-use high rise in Raleigh, N.C.

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Drafted and negotiated, on behalf of the design-builder, all contract documents with the owner, architect, general contractor, and subconsultants in connection with the design and construction of a new health sciences building, valued at more than \$10 million, at a university in Pennsylvania.

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Drafted and negotiated a \$40 million guaranteed maximum price agreement in connection with the construction of a hotel in Philadelphia.

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Drafted and negotiated a \$33 million design-build agreement in connection with the design and

construction of a five-star hotel in New Orleans.

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Negotiated the resolution of respective delay claims of an owner-developer and construction manager arising out of the construction of a mixed-use tower in Indianapolis.

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Negotiated the resolution of respective delay claims of the owner-developer and construction manager arising out of the construction of a high rise, luxury condominium tower in New York City.

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Secured a significant victory in the Commonwealth Court of Pennsylvania on behalf of Allan Myers, LP, a non-union construction company that filed a bid protest with the Pennsylvania Department of Transportation (PennDOT) challenging a provision in a project solicitation requiring that all contractors execute a Project Labor Agreement (PLA) with local unions, hire labor through local unions, and be bound by the unions' collective bargaining agreements. PennDOT dismissed the bid protest, and we successfully appealed that decision, with the Commonwealth Court unanimously holding that the PLA violated Pennsylvania's competitive bidding laws and setting a new standard for the use of PLAs. This is the first case in which a Pennsylvania court has not upheld a PLA.

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Won summary judgment on behalf of a construction manager as defendant in a breach of contract action centering on allegations that window leaks and improperly installed insulation compelled the plaintiff to give \$1.4 million in rent credits to a tenant and to reconstruct a wall of the 89,000 sq. ft. building at issue. The client repaired the minor leaks, and discovery revealed that the lease did not require that rent credits be given and that the client was not given an opportunity to inspect the allegedly faulty insulation before the wall was reconstructed. Discovery further revealed that the tenant had been in arrears from the inception of its lease, leading us to argue that the plaintiff issued the credits in an effort to recoup the arrearage from the client. In granting summary judgment in the client's favor, the court found that that the lease did not require the rent credits to be given, and thus they were a nonrecoverable voluntary payment; that the insulation claim was made outside of the warranty period of the construction contract; and that the plaintiff spoliated the insulation evidence, thus precluding the claim for replacing the insulation.

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Resolved a long-standing and hard fought construction defect case on behalf of the boards of three condominiums, securing an agreement from the developer-defendants to perform approximately \$12 million of bonded remedial work, plus a cash settlement to cover the clients' expenses. This case was particularly challenging because the buildings in question sustained flooding during Hurricane Sandy, giving the defendants an argument that the defects at issue were caused by the storm.

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Successfully represented a Fortune 100 midstream energy company (joint venture) in defense of claims of more than \$100 million by a pipeline contractor arising from the construction of the 700-mile Rover natural gas pipeline through Pennsylvania, West Virginia, Ohio, and Michigan. After a 9-day trial in Harris County, Texas, the court awarded the contractor only \$1.1 million of \$63.1 million in breach of contract damages and denied all other tort and quasi-contract claims. The court then awarded the client \$13.7 million on its counterclaims for breach of contract, as well as attorneys' fees and costs. *U.S. Pipeline, Inc. v. Rover Pipeline LLC*, 333rd Judicial District of Harris County, Texas, No. 2018-39920.

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Represented a development partnership in connection with one of the largest real estate deals in downtown Pittsburgh in 2020. The landmark project will transform an iconic Pittsburgh department store building into the premier Class A-plus, mixed-use facility in the downtown area.

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