



EDWARD B. LOZOWICKI

Partner

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OVERVIEW

Edward B. Lozowicki is a partner in the Construction, Environmental, Real Estate and Land Use Practice Group in Sheppard Mullin's San Francisco office.

Energy & Public Utility Law

For the last twenty years Mr. Lozowicki has represented independent power companies and Qualifying Facilities in regulatory proceedings and litigation regarding power purchase agreements, fuel supply contracts, construction contracts and wheeling agreements. He also represents project sponsors in the arbitration of PPA, EPC, CM and BOT contracts for power projects against government agencies. His experience in energy cases includes issues involving PURPA, FERC and California PUC regulations, contract law, the Uniform Commercial Code, business fraud and unfair competition law.

In the regulatory arena, Ed represents independent power companies, qualifying facilities and commercial users in rate making, rule making and adversary proceedings before the California Public Utilities Commission. He also counsels clients regarding the impact of new energy regulations and legislation in California. He has particular experience with the CPUC and Federal regulation of the so-called "qualifying facilities, or "QF's", and represented QF clients at the inception of the industry when QF contracts were under attack from the major utilities in the CPUC. At that time Ed represented clients in the regulatory proceedings which authorized the terms of the power purchase agreements known as "standard offers", and determined the "milestones" which established time-tables for development and construction of the plants. More recently he has appeared before the CPUC in cases involving: allocation of transmission upgrade costs; the nameplate capacity and energy rates proper for QF plants; and the curtailment priority of industrial users in event of rolling blackouts.

In the courthouse Ed has litigated several power contract disputes against major California utilities in Superior Court. One of these cases, involving energy payments, settled for \$35 million paid to our client. In another case he appeared in an adversary proceeding against a utility and obtained a permanent injunction against the utility which was trying to terminate the client QF's contract. This judgment was sustained on appeal. His other lawsuit experience includes litigation of disputes involving construction of power plants, transmission lines and related facilities.

Ed's project experience includes: nuclear, fossil, geothermal, wind, cogeneration and other types of power plants; electric power transmission lines; oil and gas pipelines; LNG facilities; nuclear and hydroelectric power plants. Ed has worked for clients with geothermal, co-generation, wind, hydro-electric and gas turbine generating plants.

Construction and Commercial Litigation

Mr. Lozowicki has more than thirty years' experience in construction and litigation,

PRACTICE AREAS

- Litigation
- Government Contracts, Investigations & International Trade
- Real Estate
- Construction and Infrastructure

INDUSTRIES

- Climate Change and Clean Technology
- Construction and Infrastructure
- Energy

and complex commercial litigation. He has tried numerous cases before federal and state courts and administrative agencies. Additionally, Mr. Lozowicki has acted as an arbitrator and advocate in a large variety of domestic and international arbitration cases, including construction claims, energy claims, and real estate and commercial disputes.

In the construction industry, Mr. Lozowicki represents contractors, subcontractors, owners and developers on diverse private and public projects involving disputes over delay, disruption, acceleration, extra work, changed conditions, construction defects, mechanic's lien and bond claims, bid protests, and other matters. In commercial litigation, Mr. Lozowicki represents developers, technology and aerospace companies in a variety of commercial and international disputes involving such issues as unfair competition, business fraud, Uniform Commercial Code, letters of credit, leases and real estate contracts.

EDUCATION

- J.D., University of Santa Clara, 1969, Associate Editor, *Santa Clara Law Review*, Outstanding Moot Court Participant
- B.A., St. Joseph's College, 1966, *Alpha Sigma Nu National Honor Society*

ADMISSIONS

- California, trial and appellate courts
- U.S. District Court, Northern, Central, Southern and Eastern Districts of California
- Ninth Circuit Court of Appeals

EXPERIENCE

Representative Clients

MidAmerican Energy Holdings Company, Flatiron Construction Corporation, Therma Corporation, Lennar Corporation, Essex Property Trust, Eden Housing Corporation, Digital Realty Trust, Sanchez Construction, MDE Electric, Co., ICOM Mechanical Co.

Published Appellate Decisions

Morris v. Horton, 23 B.R. 804 (1982), 27 Cal. Rptr. 2d 585 (1994); *Owens Corning Fiberglas Corp. v. Center Wholesale, Inc.*, 788 F.2d, 541 (1986); *In Re Center Wholesale*, 759 F. 2d 140 (1985); *Nickinello v. Roberson*

Representative Matters | Energy Litigation

Vulcan/B-N Power Company: Represented developer/operator of four geothermal power plants in a lawsuit against a major utility for breach of power purchase contract. The case concerned issues of contract interpretation, UCC provisions, fraud, antitrust and discrimination under FERC regulations. Defeated multiple motions to dismiss, and conducted extensive discovery. Case settled pre-trial in Clients' favor for mid-eight figures in payments over three years.

Del Ranch/Elmore Power Plants: Representation of developer/operator of two geothermal projects in contract litigation against major utility. Claims involved price escalation provisions of power purchase agreements. Case settled in Clients' favor pre-trial.

Nugget Hydro Electric Project: Representation of a developer of a hydroelectric project in litigation regarding the utility's obligation to provide time extensions under the power purchase contract. Our favorable injunction against the defendant was affirmed on appeal.

Salton Sea Power Generation: Represented the developer/owner of two geothermal

power plants in lawsuit against utility for breach of contract involving deration and "clawback" issues arising from a force majeure event; and the formula for indexing energy price increases in the power purchase agreements. Case settled pre-trial on favorable terms.

Salton Sea Unit No. 3: Lawsuit against a utility for failing to make capacity payments, as required by contracts during force majeure occurrences. Case settled pre-trial, after discovery and extensive negotiations, in Client's favor.

Representative Matters | PUC Regulatory Proceedings

QF Performance Proceeding: Represented independent power producers regarding CPUC investigation of QF contract performance issues and practices, triggered by the "Energy Crisis".

Section 390 Implementation Proceeding: Represented independent power producers on impact of CPUC's actions on SRAC pricing formulas and related issues raised by the "Energy Crisis".

Sayles Flat Hydroelectric Project: Represented developer in complaint proceeding in the PUC for declaratory and injunctive relief regarding the cost-sharing and scope of upgrades for interconnection facilities.

"Orphan Contracts" Proceeding: Petitioned the PUC on behalf of three Qualifying Facilities for authorization to enter into power purchase agreements despite the suspension of Standard Offer 4 contract. Relief granted for three projects.

QFMP Proceeding: Representation of developers in the PUC rule-making hearings which adopted the Qualifying Facilities Milestone Procedure ("QFMP" case).

Inverted Gas Rate Proceeding: Representing industrial consumers in opposing punitive natural gas rate "inversion." The PUC's decision was successfully over-turned on appeal to the California Supreme Court.

Representative Matters | Construction Litigation

Maxim Semiconductor Plant: Represented general contractor in arbitration against owner of chip manufacturing plant in Silicon Valley. Client claimed breach of contract for delay, design changes and failure to pay progress billings. Owner cross-claimed for alleged incomplete work. After 15 days of hearings client won multi-million dollar award for damages, penalties, attorney and expert fees. Judgment entered confirming award.

Stone Pine Meadows Project: Represented owner of apartment complex in construction defect lawsuit against general contractor and its subcontractors. Complex litigation involved multiple cross-claims and 25 parties. Case settled on eve of trial in client's favor for seven figures including damages and attorney fees recovery.

Zinc Processing Facility: Represented international energy company in litigation against EPC contractor for breach of contract and construction defects in a hi-tech zinc processing facility in southern California. Contractor cross-claimed for alleged unpaid billings. Defeated petition for arbitration by contractor. Case settled for seven figures in client's favor.

Palo Alto Veterans Administration Medical Center: Represented mechanical contractor in Miller Act lawsuit against other contractors on contract claims for unpaid extra work, delay, disruption and acceleration. Complex litigation with multiple parties and extensive depositions/discovery. Case settled shortly before trial for \$5.2 million.

Coachella/Heber Transmission Line: Representation of group of geothermal power plant developers, in lawsuit against design-build team for defects in construction of 230 kV transmission line which collapsed during windstorms. Complex multi-party case involving extensive discovery and substantial damages. Case settled in Client's favor for several million dollars.

Geysers Unit No. 16: Represented prime contractor in lawsuit against owner regarding construction of new geothermal power plant, Client asserted claims of fraud in the bid documents, acceleration, disruption and design error. Complex case settled after "mini-trial" for several million dollars in damages and attorneys fees.

Santa Clara County Hall of Justice: Represented general contractor in lawsuit against County for extra work, delay and disruption due to design errors in construction of new high-rise prison. Numerous parties were joined and multiple cross-claims were filed. After extensive discovery, case settled pre-trial for \$5.5 million in Client's favor, and additional payments to subcontractors.

Naval Petroleum Reserve Building Complex: Represented earthwork subcontractor in arbitration of claims for unpaid progress payments, retention and change orders in construction of multi-building complex for federal government. Won successful arbitration award including damages and attorneys fees and prevailed on appeal.

Valley Medical Center: Represented general contractor in lawsuit against public agency for extra work, delay and disruption on construction of new Acute Psychiatric Facility. Agency cross-claimed and added parties. Case settled in Client's favor in mediation.

MEMBERSHIPS

- Member, Forum on the Construction Industry, American Bar Association
- Member, Legal Advisory Committee, Associated General Contractors of California
- Member, Independent Energy Producers Association
- Member, Panel of Commercial Arbitrators, American Arbitration Association

ARTICLES

- Author, "*Energy Contracts: Negotiating Strategies for Added Value*," Energy Law Client Strategies: Leading Lawyers on Litigation, Negotiating, and Industry Regulations (Aspatore 2007)
- Author, "*Contracts, Claims, and Dispute Resolution*," Construction Accounting Deskbook (CCH 2005)
- Author, "*Electricity Restructuring – A New Ball Game*" (Geothermal Energy Association, 1997)
- Co-author, *Construction Law Manual* (AGC of California, 1992)

Books

- Co-author, "*Mechanics' Liens, Construction Bonds and Stop Notices*" (Sheppard Mullin 2007)
- Co-author, "*Presenting and Defending Construction Claims In California*" (Lorman 2004)
- Co-author, "*Design-Build/Turnkey Construction in California*" (Lorman 2002)
- Author, "*Binding Arbitration of Contract Disputes in California*" (American Arbitration Association, 1988)

SPEECHES

- "Mechanics Liens, Stop Notices and Construction Bonds: Special Remedies in California", Associated Builders & Contractors Seminar, November 2007.
- "Defective Specifications: Can the Spearin Doctrine Survive In A Design-Build World", CLE International Public Works Seminar, August 2007.

- "Presenting and Defending Construction Claims in California", Lorman Education Services, October 2004.
- "Turnkey Contracts Vs. The Implied Warranty of Specification Suitability: Allocation of Risks for Defective Specifications", Center for International Legal Studies, February 2004.

EVENTS

- Pitfalls of Public Works Contracting (And How to Avoid Them) Seminar - Silicon Valley
- Pitfalls of Public Works Contracting (And How to Avoid Them) Seminar - Pleasanton
- Public-Private Partnerships: New Authority and New Rules for Construction and Infrastructure Projects - Silicon Valley
- Public-Private Partnerships: New Authority and New Rules for Construction and Infrastructure Projects - Oakland
- Construction Claims
- Construction Claims in Public Works Disputes