

## → Construction

Sheppard Mullin represents owners, developers, contractors, subcontractors, design professionals, governmental agencies, REITs, lenders and sureties in a broad range of domestic and international construction law matters relating to public and private projects. We offer a one-stop shop, advising clients from project inception to conclusion. Whether negotiating contracts or prosecuting and defending high-stakes disputes, we partner with our clients to realize their project goals.

Unlike many firms, we have maintained construction as a core practice with a large team of attorneys dedicated to meeting the global needs of our clients. We are proud to have assisted our clients with projects that range from the first major investment of a growing business to some of the largest and most sophisticated projects in the world.

Based on decades of work, our attorneys have earned respect as leaders in the field. *Chambers USA*, for example, has recognized our team for both the high quality and the remarkable range of our work, including our expansive client base. According to the guide, we have “built an excellent reputation for litigation, arbitration, mediation, contracts and mechanics’ lien law across a breadth of public and private projects.” *The Legal 500* reports, “Clients value the firm’s combination of ‘outstanding service and practical advice with great insight into underlying legal issues’” and commends our “balanced practice.” *PLC (Practical Law Company)* also honored the firm by listing us as one of the top cross-border construction and projects firms.

### Project and Infrastructure Advice

We advise clients in establishing the most appropriate business entity for a given project, as well as on licensing issues and on the unique aspects of public works projects. In addition, we negotiate with governmental agencies concerning entitlements, development rights, permitting and variances. Because environmental and land use issues permeate projects, we provide deep expertise in these areas to ensure the best possible assessment of our clients’ projects.

Our attorneys advise owners and contractors on the bidding and awarding of projects. We also prosecute and defend bid protests and, when appropriate, effectively coordinate outside support on behalf of an affected party.

We frequently advise developers, owners, contractors, and financing parties on construction-related contracts, including construction services, design/build, engineering/ procurement/construction (EPC), architectural or engineering services, and construction management, as well as all related subcontracts. Whether negotiating and drafting contracts or enforcing them in mediation, DRB proceedings, arbitration, litigation and other dispute resolution contexts, we help our clients secure the best possible results.

Our attorneys also work to ensure that a project or project participant is properly insured and/or bonded. We advise with respect to commercial general liability, course-of-construction property (builder’s risk) and professional liability insurance policies. We also advise on payment, performance and Miller Act bonds, including when these bonds should be obtained and how they function. We have experience both making claims on bonds and defending sureties and their principals.

## Project Execution

We routinely provide project counsel services, advising clients on a myriad of issues that can arise during the course of the execution of construction, such as contract interpretation questions, work quality or delay issues, and relevant insurance coverages and claims, to name just a few examples.

Of course, dispute avoidance begins with good project management. Our experience handling construction disputes enables us to provide sound advice on how clients can avoid, informally resolve, and prepare to prosecute or defend claims. We help educate clients on how to properly document events so that the history is available to prove or defend potential claims. We also counsel clients on the handling of requests for information, unforeseen site conditions, change order proposals and scheduling conflicts.

Our attorneys offer training and compliance advice to help clients preserve their statutory rights with respect to the execution, recording and service of preliminary notices, mechanic's liens, stop-payment notices and construction bonds, perfection of claims and, in the case of owners and lenders, disbursement obligations.

## Dispute Management and Resolution

When disputes arise, we take every action necessary to help clients manage them and achieve early resolution when possible. We assist clients in mediated and informal negotiations, prepare clients for presentations before dispute review boards and other mid-contract dispute resolution mechanisms, and arbitrate limited issues even while a project is ongoing.

Unfortunately, not all disputes are resolved while a project is ongoing. We represent clients in all types of domestic and international arbitrations, litigations and mediations. Our experience includes disputes arising out of the development of power plants, oil processing facilities, roads, bridges, rail lines, airports, schools, libraries, water treatment and sewage disposal facilities, flood control stations, solar energy facilities, high rise office buildings, condominium projects, residential subdivisions and mixed-use developments, among many others. We resolve disputes pertaining to a broad range of issues, such as:

- Extra and changed work claims
- Delay, disruption and acceleration claims
- Professional liability of architects, engineers and other professionals
- Defective product/work claims
- Process plant equipment and design issues
- EPC and other design-build contracts
- Green building issues
- Bid protests
- Mechanic's liens, stop notice and bond claims
- False claims

## Clients

- 1535 Carla Ridge, LLC
- ABB Inc.
- Aduro Biotech, Inc.
- Angelo Gordon & Co.
- ARB, Inc. / Primoris Services Corporation
- Art Center College of Design
- Atkins Global / Atkins North America
- Atkinson Contractors
- Auto Club of Southern California
- Baha Mar Development Company, Ltd.
- Bank of America
- Bechtel Corporation
- Bixby Land Company
- CalEnergy
- Comerica Bank
- Crystal Springs Uplands School
- DHL Express (USA), Inc.
- Diageo Chateau & Estate Wines
- Digital Realty Trust
- Exide Technologies
- FCI Constructors
- Flatiron Construction Corp.
- Fluor Corporation
- Forest Lawn Mortuary
- Framestore, Inc.
- Gould Property Company
- Great Lakes Dredge & Dock
- Hess Corporation
- ICA-Fluor Daniel, S. de R.L. de C.V.
- Jacobs Engineering Group Inc.
- Jensen Corporation
- John Muir Health Center
- John Wayne Airport

- Kiewit Infrastructure West
- Kiewit Power Constructors
- MUFG Union Bank
- NNE, Inc.
- NRG Energy
- Shimmick / Obayashi Joint Venture
- OneWest Bank
- Orange County Public Works
- Parsons Corporation
- Parsons Transportation Group Inc.
- Primestor Development, Inc.
- Samsung Engineering Co., Ltd.
- San Diego Gas & Electric Company
- Sempra Energy
- Sol Systems, Inc.
- The Church of Jesus Christ of Latter-day Saints
- The Container Store, Inc.
- Therma Corporation
- U.S. Bank
- US HealthWorks
- Wells Fargo Bank

## Experience

### Dispute Resolution

- Transactional and litigation counsel to 1535 Carla Ridge of Louisiana, LLC respecting development of a multi-million dollar residence in Beverly Hills. Prepared entire suite of contracts for the project (construction, construction management, architect and various consultant contracts). Co-defending two lawsuits brought by adjacent neighbor for alleged municipal code violations, nuisance and negligence. Prevailed in first lawsuit which is now on appeal; second lawsuit pending.
- Secured settlement victory for Samsung Engineering Co. Ltd. in a dispute with Alcoa, Inc. in the Southern District of New York in connection with disputes arising from engineering and construction work for a \$10 billion joint venture between Alcoa and Ma'aden in Saudi Arabia.
- Representing Samsung Engineering Co. Ltd. in ICSID arbitration against Sultanate of Oman arising out of oil refinery upgrade project.
- Defended Jacobs Engineering Group Inc. against a professional negligence claim for \$18 million brought by the County of San Bernardino arising out of the expansion of the Adelanto Detention Center relating to alleged deficiencies in, among other things, the fire protection system.

- Represented a utility in a multi-billion dollar international arbitration against a steam generator manufacturer regarding the permanent shutdown of a nuclear plant in Southern California.
- Defended various subsidiaries of Hess (fka Amerada Hess Corporation) against owner's breach of contract/breach of warranty action arising out of turnkey installation of co-generation plant.
- Represented an international church in litigation concerning a construction project to acquire and renovate a commercial space for use as a church. Obtained a multi-million dollar, pre-trial settlement in favor of the client in one of the largest monetary awards recovered under the Religious Land Use and Institutionalize Persons Act.
- Represented EPC contractor, ICA-Fluor Daniel, S. de R.L. de C.V. and Fluor Corporation, in an international arbitration involving claims by owner for damages of approximately \$100 million arising from the alleged deficient performance of ICA-Fluor's obligations under contract for a nitrogen production plant in Mexico. Following lengthy arbitration hearings, achieved a settlement under which ICA-Fluor paid nothing and owner's insurer funded a payment to owner for a small fraction of the amount claimed.
- Represented Parsons Corporation and various affiliates and joint ventures for more than two decades in numerous matters, including defending against design and construction defect claims, subcontractor listing law claims, wrongful termination claims, delay and disruption claims and joint venture disputes, and prosecuting indemnity, professional negligence, breach of contract and other claims.
- Represented ARB, Inc. as plaintiff EPC contractor in successful litigation against owner, engineer, supplier and manufacturer involving a landfill gas recovery project, including breach of contract, delay and defect claims.
- Represented ABB Power as EPC contractor for a utility-owned electrical power converter station in defense of action by utilities alleging property damage and economic loss resulting from fire at the station allegedly attributable to design defects. Obtained summary judgment in favor of contractor.
- Represented Kobe Steel, Ltd. in negotiations regarding various equipment performance issues arising out of EPC contract for 575 megawatt combined cycle generating plant (Haynes Generating Station) owned by Los Angeles Department of Water and Power.
- Represented Bank of America as construction lender in numerous mechanics lien foreclosure, stop notice enforcement, design and construction defect actions.
- Represented general contractor in AAA arbitration involving claims arising out of delayed construction project. With more than \$22 million in dispute, defeated respondent's \$16 million cross-claim and obtained victory (95% recovery) on behalf of claimant. Obtained \$1.5 million attorney's fees award.
- Represented EPC contractor in AAA arbitration arising out of termination for default by utility company of contractor on project to construct a power generating facility, resulting in favorable settlement during trial.
- Represented owner against non-payment and escalation claims. Obtained summary judgment against all affirmative claims.
- Represented owner in multi-million dollar design and construction defect litigation.
- Represented Textron Financial Corporation in two related lawsuits in Hawaii stemming from construction of a luxury residential resort and golf course development on the island of Hawaii.

## **Project and Infrastructure Advice**

- Construction counsel for Exide Technologies, preparing various contracts and advising re \$24 million deconstruction/decontamination of former secondary lead smelter facility in Vernon, California.
- Represented Baha Mar Development Company, Ltd., an international resort development company, in connection with an approximately \$3 billion resort development in The Bahamas as outside project counsel. Drafted and negotiated design-build, architectural, engineering, construction management and construction contracts, international contract dispute resolution programs, completion guarantees and related bonding and insurance coverage requirements. Advised on various contract performance issues and claims by and against contractors.
- Represented project owner, Amyris Pesquisa e Desenvolvimento de Biocombustíveis Ltd., a Brazilian biotechnologies company, in connection with Amyris' design, procurement and construction of a renewable fuels production plant and associated facilities in Brazil. Drafted and negotiated engineering services agreement with designer; drafted forms of purchase order agreement for major equipment packages; and advised regarding drafting of construction/installation contracts and related insurance coverage requirements.
- Represented John Wayne Airport as project owner in drafting of turnkey contract for engineering, procurement and construction of cogeneration plant and central plant facility for the Airport.
- Represented John Wayne Airport on multi-phase Airport Improvement Project. Advising on and drafting numerous contracts, including architectural and engineering services, construction management and construction, including for new Terminal C and improvements to Terminals A and B, Parking Structure C, Airlines Tenant Improvements, Seismic Remediation of Elevated Roadways and aircraft storage structures (among others), as well as design-build contracts for Common Use Passenger Processing Systems, Parking Access and Revenue Systems and Maintenance Building.
- Represented a leading financier of distributed generation renewable energy projects for the debt and tax equity financing of a portfolio of solar power projects in California, including negotiation of tax equity financing agreements and review of PPA and EPC Agreements.
- Represented the project developer of a 30 MW solar farm in North Carolina in connection with the negotiation and documentation of the EPC contract and the project purchase and sale agreement.
- Represented Calpine Corporation in their negotiations with a leading EPC contractor for the EPC Agreement for the turn-key construction of a 600 MW gas fired power plant in California.
- Represented the developer of a 1200 MW power project in northern Vietnam in its negotiation of a BOT Agreement, PPA, EPC Agreement and Fuel Supply Agreement.
- Represented the developer of a 1200 MW power project in southern Vietnam in its negotiation of a Government Guarantee and Undertakings Agreement, PPA and EPC Agreement.
- Drafted and negotiated numerous engineering, construction and integration contracts for various facilities of DHL Express (USA), Inc. throughout the United States and Guam; provided construction-related advice throughout construction.
- Drafted and negotiated engineering, procurement and construction contracts for Clean Energy Fuels Corp. of various LNG and CNG facilities; provided advice re disputes arising during construction.
- Negotiated and drafted public works contracts for Parsons Corporation and related subcontracts for designing, furnishing and installing positive-train control on Metrolink and Caltrain commuter rail systems.

- Represented Angelo, Gordon & Co. in connection with build-to-suit leases, including negotiating, drafting and reviewing design, construction, owner's representative and other transactional agreements; advising re surety bonds and title insurance issues; assisting with procurement of and due diligence in connection with construction loans. Projects include Goodyear Tire & Rubber Co. Headquarters, Chiquita/Fresh Express refrigerated food processing facility and Panavision International office building.