

Construction

For over twenty years, the Sussman Shank construction industry group has guided clients through every imaginable project, situation, economic change, and day-to-day challenge. There is little we haven't seen, and less we haven't handled. We bring our vast experience, perspective and industry knowledge to every client, every project, every time.

In addition to unmatched expertise, our construction group brings a unique interdisciplinary approach to our work. Construction projects don't happen in a vacuum. Getting a project over the finish line often involves multiple practice and industry teams, working closely under tight timelines. As a full-service firm, Sussman Shank excels at this kind of work. Whether the expertise needed is corporate, transactional, bankruptcy and restructuring, agribusiness or even litigation, we have the experienced professionals to assist you and provide the synchronized knowledge it takes to get projects done.

With over 100 years of cumulative experience, we're also intimately familiar with the ins and outs of the local, state, and regional construction industry. Three of our lawyers have not only served on the executive committee of the Oregon State Bar Construction Law Section, but have chaired the group. And we stay up to date on the current legislative activities. We know the players, the rules, the risks, and the opportunities. Nobody knows the construction business better.

OUR ADVANTAGE

Mastering Master Services Agreements

General contractors, or subcontractors who hire other subcontractors, are increasingly moving towards Master Services Agreements rather than large, project-specific contracts. While this approach can be more efficient, it can also expose subcontractors to unacceptable levels of risk. A provision that may not be objectionable for a \$20,000 work order can be a potential disaster for a \$2,000,000 one, which is why we help clients

Practice Area Chair

William (Bill) G. Fig

PARTNER

O: 503.243.1656

wfig@sussmanshank.com

determine which approach is right for their business instead on a one-size-fits-all solution.

Tracking Macro Trends

More than most industries, construction is one that ebbs and flows with the state of the economy. A cost overrun that's accepted as a matter of course when times are good can result in a serious dispute, even litigation, when the economy tightens. We always advise clients to keep a close eye on the economy when developing strategies and plans. And we are ready to negotiate or litigate resolution of a payment dispute should the need arise.

A One Stop Shop for Construction Industry Players

In order to draft or review a contract, you not only need to understand the client and the client's scope of work on the project, but you must also understand how the contract terms may affect the client. We do. Since we have litigated almost every conceivable construction contract provision and claim, we understand what should and, perhaps more importantly, should not be in a client's contract. And, if a contract dispute arises, we have the experience and knowledge to prosecute or defend the client's position whether in negotiations, arbitration, and/or state or federal court.

AREAS OF EXPERTISE

- Bond claims
- Change order disputes
- Complex impact, delay, disruption, and acceleration claims
- Construction defect claims
- Construction litigation
- Contract drafting, negotiation, administration, and enforcement
- Contract litigation
- Financial crisis counseling and work-out plans
- Insurance and indemnity
- Lien claims and lien foreclosure action
- Project procurement and bid protests

REPRESENTATIVE CASES

Subcontractor Public Project Bond Claim

We represented a drywall subcontractor who filed a bond claim and a breach of contract claim against a local general contractor on a \$1.2



million school remodel project. Our client, a significant subcontractor on the project, claimed that it was improperly terminated after it demanded payment for the contract and extra work it had performed. The general contractor denied the claim and aggressively defended the action. We handled the matter from the first claim notice to the surety through a five-day court trial. Our client prevailed on both of its claims at trial and at the Court of Appeals on the contractor's appeal of the trial court's ruling.

Subcontractor Lien and Contract Claim

We successfully defended an owner/developer's allegations against an electrical subcontractor on a \$3 million project and recovered all sums owed our client. The owner/developer alleged our client failed to follow the project's specifications and plans. Our client filed a lien claim equal to the payments and retainage withheld by the owner. This case was unique because the main controversy was submitted to binding arbitration. After obtaining a favorable arbitration decision, we enforced our client's construction lien rights in court and recovered the entire claim amount including attorney fees, interest, and arbitration costs.

Contractor Construction Lien Foreclosure

Sussman Shank successfully represented a commercial contractor in a breach of contract and construction lien foreclosure matter. The matter involved a commercial property owner that claimed its agent did not have the authority to bind the owner to a contract. As a result of our representation, the client obtained an arbitration award for the full amount of the claim.

Defense of Delay and Impact Damages Claims Against Owner

We represented the owner of a hospital and medical clinic in a delay, impact, and change order dispute against a general contractor and two subcontractors. Our client faced a claim in excess of \$1 million which we successfully resolved in less than six months without resorting to litigation, formal mediation or arbitration. Our claims analysis and presentation of evidence convinced the general contractor and subcontractors to accept less than 30 percent of their original claim amount.

Material Supplier Claims and Defense

We regularly represent regional suppliers of building materials, drywall, as well as suppliers of commercial, industrial, and residential paints and related supplies. During these long-term relationships, we have filed lawsuits, lien claims, and private and public bond claims throughout the Northwest. We represent these suppliers in state courts, federal courts and administrative proceedings. In addition, we have successfully defended and resolved multi-million-dollar breach of warranty, products



liability, negligence, and construction defect and delay claims brought against these suppliers.

Subcontractor Contract, Change Order, and Delay Claims

We represented several large specialty subcontractors working on silicon wafer plants. These cases involved more than 20 parties and complicated claims including scope of work disputes, defense and prosecution of impact claims, and contract integration issues. We successfully defeated efforts to invalidate lien claims and forced resolution through unfavorable arbitration provisions. By carefully planning a litigation strategy, we coordinated the activities of the subcontractors as a group, saving our clients thousands of dollars in fees and strengthening our clients' position in mediation. As a result, our clients recovered millions of dollars at a fraction of the cost normally associated with complex and multiple-party construction disputes.

Construction Defect Defense – Siding Contractor

We represented a siding contractor in a multimillion dollar claim by the owners and homeowners' association of a 44-unit subdivision, against 17 defendants and third-party defendants, for a wide variety of alleged construction defects. The claim involved complex issues of relevant construction standards and practices, subcontractor responsibilities and interrelations, contract interpretation, the effect of a class action settlement against the manufacturer of the siding involved, and the measure of damages. We achieved a favorable resolution in mediation for a fraction of the original claim amount and obtained a dismissal of all claims against our client.

General Contractor Contract Claim and Defense

We represented a general contractor in an arbitration in which our client sought more than \$2 million for unpaid work on a commercial project, but the owner was claiming in excess of \$2 million in delay damages. This dispute was unique in that all major witnesses lived in a number of different states, and the parties did not have the typical subpoena powers that stem from a traditional lawsuit. Despite the limitation, we were able to locate and obtain statements from the witnesses which greatly assisted our client in favorably settling the lawsuit.

Homeowner Lien Claim Defense

We represented a homeowner in defending a construction lien claim by a restoration company. After a four-day trial, we successfully defended the lien claim by showing that the contractor had not met all requirements to claim a lien. The lien was therefore declared invalid, and our client was awarded all attorney fees and costs incurred.

Supplier Lien Claim



We represented a local supplier with a construction lien claim against a large private construction project in Oregon. Our client's customer, a large subcontractor on the project, walked off the project due to a change order and other disputes with the general contractor. The subcontractor owed our client a significant sum for materials which related in part to the disputed change order and extra work claims. We prepared and recorded a lien against the project and then successfully negotiated payment with counsel for the general contractor. Our client received full payment without filing a lawsuit and avoided the fallout and delay of the ensuing lawsuit between the general contractor and our client's customer.

Consumer Protection Act Defense of Homebuilder

We represented a Washington homebuilder in a lawsuit filed against a real estate investor for breach of promissory note and the judicial foreclosure of the trust deed that secured the note. The defendant investor attempted to avoid liability for his obligations by asserting Washington Consumer Protection Act counterclaims against our client. At the trial court, we prevailed on a motion for summary judgment granting the client's claims against the investor and defeating the investor's Consumer Protection Act counterclaims. The investor appealed the trial court's rulings. On the appeal, we decisively defeated the investor's complex Consumer Protection Act arguments, and the Court of Appeals affirmed the trial court's rulings.

Related People

Steven F. Cade

PARTNER

O: 503.243.1655

scade@sussmanshank.com

Curtis A. Welch

SPECIAL COUNSEL

O: 503.972.2529

cwelch@sussmanshank.com

Jason W. Alexander

PARTNER

O: 503.243.1623

jalexander@sussmanshank.com

Mikaela E. Marino

ATTORNEY

O: 503.688.5639

mmarino@sussmanshank.com

William (Bill) G. Fig

PARTNER

O: 503.243.1656

wfig@sussmanshank.com

Darin D. Honn

PARTNER

O: 503.243.1629

dhonn@sussmanshank.com

Andrea R. Meyer

PARTNER

O: 503.972.4254

ameyer@sussmanshank.com

Patrick Sullivan-Lovett

ATTORNEY

O: 503.243.1638 x 255

psullivan-lovett@sussmanshank.com