

## William B. Westcott

### Co-Managing Shareholder

#### PRACTICE EMPHASIS:

Construction; litigation and transactional

#### EDUCATION:

J.D., *cum laude*, University of Houston Law Center, 2000

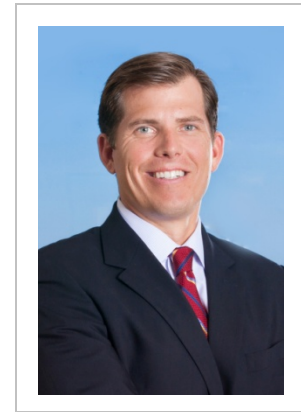
B.A., *cum laude*, Rice University, 1997

#### ADMITTED:

State Bar of Texas

#### COURT ADMISSIONS:

U.S. District Court, Southern, Eastern and Western Districts of Texas



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#### **Profile:**

Board Certified in Construction Law by the Texas Board of Legal Specialization, Ben Westcott's practice focuses on both transactional and dispute resolution aspects of construction law. He represents general contractors, subcontractors, suppliers and owners on substantial construction projects, including schools, public infrastructure, sports facilities, airports, petrochemical and industrial plants, highway projects, wastewater treatment facilities, multi-family projects, retail centers, hotels, hospitals and office buildings. His experience includes the prosecution and defense of a variety of construction-related issues before state and federal courts, as well as the American Arbitration Association, including matters related to payment disputes; scheduling claims; subcontract claims; design defects; mechanic's liens; performance and payment bonds; differing site conditions; breach of contract; construction defect claims; delay and acceleration claims; and termination of contracts. Ben also drafts and reviews construction contract documents.

Additionally, Ben maintains an active alternative dispute resolution practice mediating and arbitrating construction disputes, and is a member of the Panel of Arbitrators of the American Arbitration Association.

The prestigious legal directory, *Chambers USA, America's Leading Lawyers for Business*, again recognized Ben as a leading construction lawyer for eight consecutive years.

#### **Professional Recognition:**

Construction Law, Texas Board of Legal Specialization  
*Chambers USA, America's Leading Lawyers for Business*, 2008-2015  
"Texas Rising Star," *Texas Monthly*, 2004 – 2014  
"Texas Super Lawyers," *Texas Monthly* (Construction), 2014 - 2015  
The Best Lawyers in America (Construction Law), 2008 - 2011  
Texas' Best Lawyers (Construction Law), 2008 - 2011  
AV<sup>®</sup> Preeminent<sup>™</sup> Peer Review Rating (5.0 out of 5), *Martindale-Hubbell*

#### **Affiliations:**

State Bar of Texas, Construction Law Section (Council Member, 2010 – 2013; Legislative Liaison, 2015 – 2016)  
Houston Bar Association, Construction Law Section (Past Chairman)  
American Bar Association (Member, Forum on the Construction Industry; Member, Division 9 Steering Committee)  
American Arbitration Association, Panel of Arbitrators  
Associated Builders and Contractors of Texas, Board of Directors  
Associated Builders and Contractors Greater Houston, Board of Directors

Affiliations (Cont'd)

Economic Alliance Houston Port Region, Board Member  
Houston Contractors Association  
Mechanical Contractors Association  
Construction Financial Management Association  
American Society of Heating, Refrigeration & Air-Conditioning Engineers  
University of Houston Industry Advisory Board (Commercial Construction) Member

**Teaching Experience:**

Adjunct Professor, University of Houston College of Technology, Construction Management, Spring 2014  
Adjunct Professor of Law, University of Houston College of Law, Basic Construction Law, Fall 2012

**Representative Experience:**

- Represented utility contractor in a \$20 million waterline and bridge construction dispute related to work done on the Galveston Causeway.
- Represented millwork subcontractor in connection with third party claims for personal injuries, while navigating complex liability and coverage issues related to the renovation and expansion of the Birmingham-Shuttlesworth International Airport.
- Represented national highway contractor in a multi-million dollar dispute with TxDOT and the earthwork subcontractor.
- Defended mechanical contractor in large scale, multi-million dollar construction defect claim brought by both developer and owner/operator of statewide hospital system.
- Negotiated multi-party construction management and design-build agreements for Texas mixed-use development.
- Defended multiple contractors in large-scale litigation relating to chilled water piping systems at Reliant Stadium.
- Defended mechanical contractor in South Central Texas school district construction defect case.
- Defended general contractor, individual owners, and surety in the arbitration of a multi-million dollar breach of contract case, with bond claim and fraud claims relating to subcontractor's work on a power plant retrofit project. Resulted in client's successful recovery of retainage and attorney's fees, as well as complete denial of the claimant's alleged damages.
- Defended subcontractor against large-scale construction delay, construction defect and water damages claims relating to construction of 33-story hospital systems development.
- Represented subcontractor in defense of water damage subrogation claim by local transit authority in connection with an urban administrative building.
- Represented retail shopping center in claims against general contractor and subcontractors regarding construction defects and repair of same.
- Represented hotel management and development company in negotiations of Design/Build contract with a general contractor for a commercial building to hospitality project conversion.
- Successfully defended general contractor in arbitration before the AAA for subcontractor's breach of contract claim, with recovery of termination expenses, cost of completion damages and attorney's fees.
- Defended general contractor against construction defect claims by subsequent purchaser of hospitality project.
- Represented national restaurant and entertainment tenant in enforcement of restrictive covenant against competing category tenant in urban, mixed-use development.

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Representative Experience (Cont'd)

- Represented national specialty contractor in dispute against U.S. Army Corps of Engineers through Request for Equitable Adjustment under Federal Acquisition Regulations.
- Represented general contractor in successful retraction of termination for default by agreement for extension of time for project completion.
- Successfully represented public works contractor in attempted debarment proceeding by the City of Houston.
- Represented underground utility contractor in connection with District of Columbia Water and Sewer Authority Project.
- Represented contractors in defense of multimillion dollar claims relating to local professional baseball stadium.
- Represented contractor in connection with the recovery of completion costs on certain downtown Houston construction contracts valued over \$30 million each.
- Represented steel fabricator and erector in connection with the construction of a \$270 million Houston office building.
- Represented government contractor in connection with the recovery of completion costs, delays and impacts on a state-of-the-art fighter jet component finish facility in Fort Worth, Texas with a construction cost of over \$300 million
- Represented contractor who installs energy conservation equipment and fixtures to reduce energy consumption and increase energy efficiency at certain government and municipal facilities throughout the United States.
- Represented contractor in connection with delay, change order and increased costs claim on major Houston downtown sports facility.
- Represented contractor in connection with delay, change order and increased costs on construction of new north Houston airport terminal.
- Represented MEP engineer in collection of unpaid fees for design work on major demolition and expansion of south Houston airport terminal.

**Recent Speeches and Publications:**

- "Legislative Update," State Bar of Texas Construction Law Conference, San Antonio, TX, March 2017
- "Construction Disputes, The Long and the Short of It," Construction Financial Management Association, Houston Chapter, February 2017
- "City of Houston's 'Developer Bond' Requirements," AM Monthly Law Alert, November 2016
- "Indicate Precisely What You Mean to Say: Contract Provisions That Work," American Bar Association Forum on the Construction Industry, Fall 2016
- "Killer Contract Clauses," Foundation Performance Association, August 2016
- "Contract Bond Forms: Know the Risks Before You Sign," Surety Association of Houston, June 2016
- "Legislative Updates," State Bar of Texas Construction Law Conference, March 2016
- "Change Orders vs. Construction Change Directives: The Devil is in the Details," The Construction Lawyer, Journal of the ABA Forum on Construction Law, Volume 36, Number 1, Winter 2016
- "Legislative Updates," American Society of Heating, Refrigeration and Air-Conditioning Engineers, Houston Chapter, Fall 2015
- "Texas MWBE Programs – How to Protect Yourself from Enforcement Actions," Mechanical Contractors Association, Summer 2015
- "Contracts 101," Associated General Contractors, Houston Chapter, Spring 2015
- "Contract Negotiation in the Millennial Generation," American Bar Association Forum on the Construction Industry Annual Meeting, Spring 2015

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Recent Speeches and Publications (Cont'd)

"Stuck in the Middle: A General Contractor's Unique Position in Drafting Liability for Consequential and Liquidated Damages," State Bar of Texas Construction Law Journal, Volume 11, Number 1

Moderator, "Preference Programs in Public Projects: Will this Trend Continue?" American Bar Association Forum on the Construction Industry Annual Meeting, Dana Point, CA, April 2013

"Working with the Texas Legislature: Identifying, Presenting and Passing Construction-Friendly Bills," Houston Bar Association, Construction Law Section, September 2012

"Construction Contract Killer Clauses: Tips for Owners and Contractors to Survive Contract Negotiations," American Bar Association, Forum on the Construction Industry Webinar, June 2012

"Flow Down Clauses from a Subcontractor's Perspective: What's Swut?," State Bar of Texas Construction Law Conference, San Antonio, TX, March 2012

"Texas Anti-Indemnity Bill (HB 2093)," Private Event/Client Education Series, (Co-Presenter), March 2012

"Texas Anti-Indemnity Bill (HB 2093)," Private Event/Client Education Series, (Co-Presenter), January 2012

"Texas Anti-Indemnity Bill and Other Legislative Updates," American Society of Heating, Refrigeration and Air-Conditioning Engineers, Houston Chapter, November 2011

"Legislative Updates," American Society of Plumbing Engineers, Houston Chapter, November 2011

"Case Study on Minute Maid Park," International Concrete Repair Institute, Houston Chapter, October 2011

"Legislative Updates," Construction Financial Management Association, (Co-speaker with Texas State Representative Rob Eissler), September 2011

"2011 Legislative Updates," Mechanical Contractors Association, August 2011

"Legislative Updates," Associated Builders and Contractors, July 2011

"Lien Releases – Recent Cases and Proposed Legislation," Gainer, Donnelly & Deroche Roundtable, May 2011

"Government Procurement Statutes," Economic Alliance Port of Houston Region, May 2011

"E.I.F.S. After K-2: Enforcing Indemnity for Sellers in Products Liability Action," State Bar of Texas Construction Law Conference, February 2011

"Price Escalation Clauses," University of Texas School of Law, September 2010

"Texas Lien and Bond Claims," American Subcontractors Association, September 2010

"Value Engineering," ASHRAE, August 2010

"Dangers of Partial Lien Releases," Texas Merit Shop Journal: Caselaw Update, July 2010

"Differing Site Conditions," Texas Merit Shop Journal, May 2010

Drafted 2009 revisions to Texas Trust Fund Statute