

R. Carson Fisk

Shareholder, Austin Managing Director

PRACTICE EMPHASIS:

Construction law; litigation; mediation and arbitration

EDUCATION:

J.D., The University of Texas School of Law, 2003

B.A., *cum laude in honors studies*, Texas Tech University, 2001

ADMITTED:

State Bar of Texas

State Bar of Oklahoma

COURT ADMISSIONS:

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

U.S. District Court, District of Colorado

U.S. Court of Appeals, Fifth Circuit

U.S. Court of Appeals, Tenth Circuit

U.S. Supreme Court



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Profile:

Board Certified in Construction Law by the Texas Board of Legal Specialization, Carson Fisk represents construction industry participants in both contentious and non-contentious matters, including complex construction litigation and claims, contract drafting and negotiation, and best practices and claims counseling matters. He also actively represents general contractors, developers/owners, architects, engineers, subcontractors, suppliers, and sureties. He has experience with construction disputes involving construction and design defects, delay and acceleration claims, payment claims, mechanics liens and bond claims, termination claims, administrative actions, and surety claims on a variety of projects, although he is adept in assisting parties in resolving their disputes prior to trial/final hearing. He has also drafted and negotiated a variety of construction contracts, including prime contracts, design contracts, EPC agreements, lender agreements, subcontracts, and purchase contracts, in both the private and public sectors. Additionally, he maintains an active alternative dispute resolution practice mediating and arbitrating construction disputes, and is a credentialed mediator with the Texas Mediator Credentialing Association, a member of the Panel of Mediators of the American Arbitration Association, a member of the National Panel of Construction Arbitrators of the American Arbitration Association, and a Fellow of the Chartered Institute of Arbitrators.

Carson is the current chair of the City of Austin Construction Advisory Committee, a committee on which he has served since 2012. He has also been involved in Preservation Austin, an architectural preservation organization that seeks to protect the architectural and cultural heritage of the greater Austin community.

Professional Recognition:

Construction Law, Texas Board of Legal Specialization

Fellow, Chartered Institute of Arbitrators

Chambers USA, America's Leading Lawyers for Business, Up-and-Coming, 2020

"2018 Lawyer of the Year," (Construction Law) 2018 Edition of Austin & San Antonio Best Lawyers

"Texas Super Lawyer," *Texas Monthly*, 2015-2020

The Best Lawyers in America ® by Woodward/White Inc. (Commercial Litigation); Since 2016

The Best Lawyers in Texas ® by Woodward/White Inc. (Commercial Litigation); 2021

"Texas Rising Star," *Texas Monthly*, 2007-2008, 2013-2015

Professional Recognition (Cont'd)

AV[®] Preeminent[™] Peer Review Rating, *Martindale-Hubbell*
Finalist, American Bar Association National Outstanding Young Lawyer Award, 2012
Fellow, Texas Bar Foundation, 2012-present
Tom Garner Award Recipient, Texas Board of Legal Specialization

Affiliations:

Austin Bar Association, Construction Law Section (Member, 2004-present; Council Member, 2012-2014)
Austin Bar Association, ADR Section (Member, 2011-present; Secretary, 2015-2016; Chair, 2016-2017)
Austin Bar Association, Oil, Gas & Mineral Law Section (Member, 2017-present)
State Bar of Texas Construction Law Section (Member, 2004-present)
State Bar of Texas ADR Section (Member, 2011-present)
Oklahoma Bar Association, ADR Section (Member, 2016-present)
American Bar Association, Forum on the Construction Industry (Member, 2004-present; Chair of the Construction Forum Young Lawyers Section, 2009-2012; Division 8 Steering Committee, 2013-2016)
Texas Bar College (Member, 2006-present)
American Arbitration Association Roster of Neutrals (2014-present)
Texas Mediator Credentialing Association (Credentialed Mediator, 2014-present)
Dispute Resolution Board Foundation (Member, 2016-present)
Chartered Institute of Arbitrators (Fellow, 2017-present)
The Associated General Contractors of America, Austin Chapter
Associated Builders and Contractors, Central Texas Chapter

Representative Experience:

- Defended an out-of-state contractor in a lawsuit brought by an owner asserting claims of defective/deficient work seeking approximately \$100M in damages related to civil infrastructure work at an international airport, with the claim favorably settling at mediation
- Prosecuted owner's claims for defective/deficient work concerning the construction of bank buildings
- Defended a Texas-based general contractor against a subcontractor concerning the construction of a multi-family property and prosecuted the contractor's claim for delay and defective/deficient work claim, with the claim favorably settling following a mediation
- Defended a Texas-based general contractor against a defective/deficient work claim concerning the construction of a competition pool, with the claim favorably settling following a multi-party mediation
- Defended a Texas-based general contractor against a delay and defective/deficient work claim concerning the construction of a mixed use property and prosecuted the contractor's claim for unpaid work, interest, attorneys' fees and cost, with the claim favorably settling following a multi-party mediation
- Defended an Austin-based general contractor against a delay claim concerning the construction of a restaurant and prevailed on the contractor's claim for unpaid work, interest, attorneys' fees and costs
- Defended an out-of-state contractor in a lawsuit filed in Texas seeking a declaration of contract rights stemming from the construction of a chemical processing plant and prosecuted a claim for significant delay damages, with the claim favorably settling following negotiations
- Defended an out-of-state contractor in a lawsuit concerning the alleged failure to complete a project and prosecuted a claim for wrongful termination, with the claim favorably settling at mediation
- Defended a developer in a multi-party lawsuit concerning allegations of construction defects and misrepresentations, including the prosecution of third-party claims against various parties, with the claim favorably settling in various phases through negotiations
- Defended a Texas-based structural steel subcontractor in an arbitration in which the contractor sought in excess of \$1,000,000 for alleged delay damages, with the claim favorably settling in mediation

Representative Experience (Cont'd)

- Assisted civil contractor in resolving suspension, delay, and deficient work claim with improvement district following removal of project engineer
- Assisted contractor in securing the effective removal of numerous defamatory statements posted online and resolving the underlying dispute
- Drafted design-build contract documents for Texas-based university for the construction of new residence hall
- Drafted design and construction contract package for a developer concerning the development of a hotel in Hawaii
- Drafted geotechnical, architectural, and construction contract package for a public entity concerning the design and construction of a new headquarters facility
- Reviewed, revised, and negotiated numerous prime contracts and subcontracts for Texas-based athletic surfaces contractor
- Through the TxDOT administrative process, assisted a contractor in securing the removal of indirect suspension and debarment sanctions issued by the Texas Department of Transportation
- Through the administrative process, assisted an engineer in securing the removal of sanctions issued by the Texas Board of Professional Engineers
- Successfully mediated numerous construction-related disputes, addressing issues such as construction defects, payment disputes, termination claims, and lien issues
- Has provided general counsel advice and guidance to numerous construction companies
- Has served as sole arbitrator on an arbitral panel in numerous construction disputes, and authored standard and reasoned awards

Publications:

- "Ongoing Arbitration in COVID-19," AM Monthly Law Alert, August 2021
- "Ongoing Caution for Future Design-Build Work: No Legislative Relief," AM Monthly Law Alert, June 2021
- "Creative Approaches to Dispute Resolution," AM Monthly Law Alert, April 2021
- "Reflections on Poor Draftsmanship: The Story of Austin's Failings in the Era of COVID-19," AM Monthly Law Alert, December 2020
- "The Benefits of Arbitration in the Era of COVID-19," AM Monthly Law Alert, May 2020
- "Austin and Travis County Issue Updated 'Stay Home-Work Safe' Orders," AM Law Alert, April 2020
- "City of Austin and Travis County Issue Updated 'Stay Home-Work Safe' Orders," AM Law Alert, March 2020
- "Guidance Offered by The City of Austin Release Additional Guidance on Construction," AM Law Alert, March 2020
- "Houston & Austin Issued Stay Home, Work Safe Orders Effective at Midnight Tonight (Update)," AM Law Alert, March 2020
- "Houston & Austin Issued Stay Home, Work Safe Orders Effective at Midnight Tonight," AM Law Alert, March 2020
- ConsensusDocs: A Worthwhile Option for Standard Construction Contracts in Texas, *The Construction Law Journal*, 2019
- "A Cautionary Tale for Future Design-Build Work," AM Monthly Law Alert, July 2019
- Waiver and Notice-Related Traps for the Unwary, *Construction News*, 2019
- Avoid the Sunk-Cost Trap in Disputes: Make Mediation Effective, *Construction News*, 2019
- Rethinking the Recovery of Attorney's Fees as a Means to Save Costs, *Construction News*, 2019
- "The Availability of Views & Potential for Greater Use in Construction Cases," *The Construction Law Journal*, 2018
- Making the Most of Early Mediation, *Construction News*, April 2017
- Expedited Permitting Arrives in Austin, AM Monthly Law Alert, March 2017
- Expedited Permitting in Austin, AM Monthly Law Alert, September 2016
- Understanding the TxDOT Sanction Process, AM Monthly Law Alert, June 2016
- Tricks & Traps to Avoid with Factoring Companies, *Modern Contractor Solutions Magazine*, 2014
- How to Save Money in a Construction Lawsuit, *Modern Contractor Solutions Magazine* (Co-Author), 2014

Publications (Cont'd)

How to Avoid a Construction Lawsuit - Practical Tips for General Contractors, Co-Author, *Modern Contractor Solutions Magazine* (Co-Author), 2013
Increased Use of Bifurcation in Construction Cases Involving Derivative Claims, *The Construction Lawyer: Journal of the American Bar Association Forum on the Construction Industry*, Vol. 33, No. 4, 2013
Be Informed and Active on Local Issues, *Construction News*, 2013
Enforceability of Forum Selection & Choice of Law Clauses in Litigation and Arbitration, *Construction News*, 2013
Requesting Information from Upstream Parties related to Lien and Bond Claims, *Construction News*, 2013
The Demise of the Civil Claim for Misapplication of Trust Funds, *The Construction Law Journal*, Vol. 10, No. 1, 2012
Mediation as a Tool for Successful Dispute Resolution, *Construction News*, 2011
Choosing a Forum for Dispute Resolution, *Construction News*, 2011
Time to Update Your Contracts, *Construction News*, 2011
Protecting Public Project Bid Documents from Disclosure, *Texas Construction*, 2010
Carefully Consider a Surety's Indemnity Agreement, *Texas Construction*, 2010
Recordkeeping Procedures Can Help Protect Privileged Documents, *Texas Construction*, 2010
Defending Against a Misapplication of Trust Funds Claim, *Texas Construction*, 2009
Options Limited for Bid Protests on State Building and Facility Projects, *Texas Construction*, 2009
Asserting Claims Against Design Professionals on Behalf of the Contractor, *The Construction Law Journal*, Vol. 7, No. 1, 2009

Presentations & Seminars:

Texas Lien and Bond Claims, Associated General Contractors of America (Austin Chapter), October 2019
Contractor Defaults: Observations on the Construction Industry, Surety Association of South Texas, June 2019
Addressing New Challenges to Contractual Limits of Liability in Arbitration, AGC Texas Building Branch, June 2019
Key Contract Clauses in Construction, Greater Austin Contractors and Engineers Association, March 2019
Advocacy outside the Courtroom (Trial Advocacy Program): Arbitration, The University of Texas at Austin, March 2019
The Basic Course in Texas Construction Law: Mediation/Arbitration, The Construction Law Foundation of Texas, December 2018
Guest Lecturer, Cockrell School of Engineering at The University of Texas at Austin, October 2018
"Arbitral Decision-Making," Austin Bar Association Construction Law Section, October 2018
Understanding the AIA Contract Form Updates, Associated General Contractors (West Texas Chapter), May 2018
Project 101- Contracts & Bonds, Greater Austin Contractors and Engineers Association, May 2018
2017 Legislative Update, Associated General Contractors of America (Austin Chapter), 2017
Dispute Resolution Process and Issues (CE 395-Project Controls), The University of Texas at Austin, 2017
Proactive and Reactive Approaches to Minimize the Cost of Defaults, Surety Association of South Texas, 2017
How to Save Money in a Construction Lawsuit, Associated Builders and Contractors (Mid-Coast Chapter), 2017
Limitations of Liability: Enforcement and Practical Tips, The Construction Law Foundation of Texas, 2017
Texas Lien and Bond Claims, Associated General Contractors (Austin Chapter), 2017
How to Save Money in a Construction Lawsuit, Construction Financial Management Association (Heart of Texas), 2017
2016 Case Law Update, Dallas Bar Association Construction Law Section, 2016
How to Save Money in a Construction Lawsuit, Greater Austin Contractors and Engineers Association, 2016
How to Save Money in a Construction Lawsuit, Construction Financial Management Association (Central Texas), 2016
The Basic Course in Texas Construction Law: Contract Termination, The Construction Law Foundation of Texas, 2015
Construction Law Legal Specialization, San Antonio Bar Association Construction Law Section, 2015
Navigating the Pitfalls in a Texas Defamation Case, Austin Bar Association Construction Law Section, 2015

Presentations & Seminars (Cont'd)

Factoring, Contract Scope, and Cyber Liability Issues, Private Client Event, 2014

Risk Management & Factoring Seminar, Private Client Event, 2014

Texas Lien Law, Construction Financial Management Association, Central Texas Chapter, 2014

Securing Removal of a Lien Claim, Lorman Education, 2014

Hiring and Employment Practices, Associated Builders and Contractors, Central Texas Chapter, 2014

Mud-Wrestling the Chapter 162.001 Issue, The Construction Law Foundation of Texas, 2014

Ahead of Its Time: Technology Tool Box at a Construction Site, ABA Forum on the Construction Industry, 2014

How to Avoid a Construction Lawsuit and the Use of Exculpatory Clauses, 2013

Construction Lien Law in Texas, Lorman Education, 2013

The Demise of the Civil Claim for Misapplication of Trust Funds, Austin Bar Association Construction Law Section, 2012

How to Avoid a Construction Lawsuit, Greater Austin Contractors and Engineers Association, 2012

How to Avoid a Construction Lawsuit, Construction Financial Management Association, Central Texas Chapter, 2012