

## 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 eleven consecutive years.

#### Professional Recognition:

Texas Bar Foundation, Fellow

Construction Law, Texas Board of Legal Specialization

*Chambers USA, America's Leading Lawyers for Business*, 2008 - Present

"Texas Super Lawyers," *Texas Monthly* (Construction), 2014 – Present

"Texas Rising Star," *Texas Monthly*, 2004 – 2014

The Best Lawyers in America (Litigation-Construction), 2019

The Best Lawyers in America (Construction Law), 2008 – 2011, 2018 – 2021

The Best Lawyers in Texas (Construction Law) 2021

Recognized as a "Top Lawyer" by *Houstonia* magazine, January 2020

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 – 2018)

Houston Bar Association, Construction Law Section (Past Chairman)

American Bar Association (Member, Forum on the Construction Industry; Member, Division 9 Steering Committee)

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Affiliations (Cont'd)

American Arbitration Association, Panel of Arbitrators  
Associated Builders and Contractors of Texas, Board of Directors  
Associated Builders and Contractors Greater Houston, (Board of Directors 2014 – 2017; Chapter Counsel 2016 – 2018)  
Economic Alliance Houston Port Region, (Board Member 2013 – 2017)  
Houston Contractors Association, State Legislative Advisor  
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 industrial contractor against multi-million dollar delay and change order claims from plastics refinery owner
- Represented general contractor in multi-million dollar delay and scope dispute relating to luxury highrise hotel and mixed-use project
- 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

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Representative Experience (Cont'd)

- 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
- 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:**

- "Knowing When Not to Call Your Expert at Trial," American Bar Association Expert Witnesses Committee Newsletter, April 2021
- "When Your Damages Expert is Better Left in the Bullpen," AM Monthly Law Alert, October 2020
- "Top 50 Construction Law Firms Q&A," *Construction Executive*, June 2020
- "Confusion for Construction when State/County/City Issued Stay Home Orders Don't Say the Same Thing," Webinar, American Subcontractors Association – Houston Chapter, April 2020
- "Governor Abbott Shows Support of Construction Industry with New Executive Order," Andrews Myers Law Alert, March 2020
- "City of Houston Letter to Contractors," Andrews Myers Law Alert, March 2020
- "Force Majeure – Why Not," Andrews Myers Law Alert, March 2020
- "Construction Contracts, Cyber-Security & Tax Credits," Seminar with BKD Advisors, February 2020
- "You Can Keep the Change: What to Negotiate When you Have an Opportunity to Modify the Owner Contract," Houston Contractors Association Breakfast Seminar, November 2019
- "Killer Clauses in Construction Contracts," Houston Contractors Association Management Conference, September 2019

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Recent Speeches and Publications (Cont'd)

"Legislative Update/Top Ten Commonly Negotiated Construction Provisions," Lone Star Conference, September 2019

"Legislative Update/Key Contractual Risk Shifting Provisions," Mechanical Contractors Association Conference, July 2019

"How New Laws Impact Contractors," UH Lunchtime Legal Forum, April 2019

(Contributing Author) Recent Court Opinions Concerning Construction Law, *The Change Order*, State Bar of Texas Construction Law Section, March 2019

"The 32<sup>nd</sup> Annual Texas State Bar Construction Law Section Conference Recap," AM Law Alert, March 2019

"Legislative Updates," State Bar of Texas Construction Law Section Conference, February 2019

"Andrews Myers Files Amicus Brief on Behalf of Associated Builders and Contractors of Texas, Associated General Contractors-Texas Building Branch and Texas Construction Association in Texas' Third Court of Appeals on Austin's Paid Sick Leave Ordinance," AM Special Law Alert, September 5, 2018

"Construction Law/Pitfalls of Government Projects," Private Client Event, July 2018

"State of Texas Legislative Updates," Mechanical Contractors Association of Texas Annual Convention, July 2018

"City Council Passes Revised Tax Abatement Ordinance to 'Improve the Work Quality of Construction Workers'" AM Monthly Law Alert, May 2018

"Recap of the 31<sup>st</sup> Annual State Bar of Texas Construction Law Section Conference," AM Law Alert, March 2018

"Legislative Update," State Bar of Texas Construction Law Conference, San Antonio, TX, March 2018

"On Filing Insurance Claims (Post Hurricane Harvey)," AM Monthly Law Alert, August 2017

"Notice of Request for Time Extension and Claim for Builder's Risk Coverage," AM Law Alert, August 2017

"Fire Alarm Inspection Issues Delay Houston Projects," AM Monthly Law Alert, July 2017

"Legislative Update," Mechanical Contractors Association, Annual Meeting, July 2017

"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

"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