

Clayton C. Utkov

Shareholder

PRACTICE EMPHASIS:

Construction law; litigation; arbitration and mediation

EDUCATION:

J.D., Southern Methodist University School of Law, 2000

B.S., Accounting, Southwestern University, 1997

ADMITTED:

State Bar of Texas

COURT ADMISSIONS:

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

U.S. Court of Appeals, Fifth Circuit

U.S. Supreme Court



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Profile:

Board Certified in Construction Law by the Texas Board of Legal Specialization, Clayton Utkov's practice focuses on both the transactional and dispute resolution aspects of construction law. He represents general contractors, subcontractors, owners, developers and suppliers in all matters, from drafting and negotiating construction contracts to complex construction disputes, including contract disputes, performance and payment disputes, delay claims, design and construction defects, and bond and lien claims. He represents clients on public projects, including highway projects, schools, hospitals and waste water treatment facilities, and private projects, including hotels, multi-family developments, industrial facilities and office projects. Clayton has experience resolving issues for his clients through negotiations, mediation, arbitration, and litigation in both state and federal court.

Clayton also has an active construction-focused alternative dispute resolution practice; he serves as an arbitrator and is a credentialed mediator with the Texas Mediator Credentialing Association.

Clayton is based at the firm's Central Texas office location in Austin.

Professional Recognition:

Construction Law, Texas Board of Legal Specialization

The Best Lawyers in America (Construction Law), 2021

The Best Lawyers in Texas (Construction Law), 2021

"Texas Super Lawyer," *Texas Monthly*, 2013-Present

"Texas Rising Star," *Texas Monthly*, 2007-2009, 2012-2013

AV[®] Preeminent[™] Peer Review Rating (5.0 out of 5), *Martindale-Hubbell*

Affiliations:

Austin Bar Association (Former Chair, Construction Law Section)

State Bar of Texas (Member, Construction Law Section)

American Bar Association (Member, Forum on the Construction Industry)

Austin Young Lawyers Association

Austin Young Construction Lawyers Association

The Associated General Contractors of America, Austin Chapter

The Associated General Contractors of Texas (Co-Vice President, Associates Committee; Member, Public Affairs Committee)

Associated Builders and Contractors, Central Texas Chapter (Chair, Public Affairs Committee)

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Representative Experience:

- Represents multiple national and international Prime Contractors in both contentious and non-contentious matters related to infrastructure construction. Contentious work includes negotiation, mediation, arbitration, and litigation with public owners as well as subcontractors and suppliers related to payment, delays, scope of work, and defective design and construction. Non-contentious work includes analysis and negotiation of contracts.
- Represented general contractor in a bet-the-company lawsuit involving delay and defective work claims by the owner exceeding \$13 million, and wrongful termination claims by the general contractor of nearly \$8.5 million. The case involved as many as 50 other parties.
- Defended general contractor and individual indemnitors in claims by surety for almost \$7 million related to bond claims. As part of a favorable settlement, the clients paid a small fraction of the claimed damages.
- Represented general contractor seeking payment for extended general conditions and unapproved change orders in arbitration against a project owner. The owner sought damages for delays and defective construction. The case was resolved with a significant payment to the client.
- Represented general contractor who entered into more than 50 contracts to perform emergency services work as a result of hurricane damage on the coast. The disputes arose with subcontractors and related entities; all were successfully resolved in litigation for the contractor.
- Defended prime contractor against owner claims related to defective construction of retaining walls designed by the Texas Department of Transportation.
- Represented landscape architect in arbitration against project developer for payment. The Arbitrator awarded a full recovery, including damages, and legal costs, to the landscape architect.
- Represented prime contractor in negotiations with its surety and the United States Corp. of Engineers after the termination of the prime contractor from a design build project for USACE.
- Represented prime contractors in payment claims against municipalities.
- Represented national specialty contractor in negotiations with the United States Corp. of Engineers for equitable adjustment and claims by USACE of defective work.
- Represented owner in claims against its general contractor related to defective flooring.
- Represented general contractor in claims against steel subcontractor related to defective coating of exterior steel.
- Represented general contractor in claims against multiple subcontractors relating to defective waterproofing of multiple balconies on a multifamily project. The case was resolved with a significant payment to the client.
- Represented general contractor in claims against its mechanical subcontractor regarding the defective installation of the HVAC system in a multifamily project.
- Successfully represented general contractor at trial on claim against subcontractor for excess costs of construction after subcontractor refused to perform its scope of work for the amount bid.
- Represented project owners and general contractors in claims related to the Americans with Disabilities Act.
- Represented numerous, owners, general contractors, subcontractors, and suppliers in payment disputes.
- Drafted and negotiated numerous general contractor/subcontractor agreements and general contractor/owner agreements.

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Publications:

"Protecting your Company from Material Delays," AM Monthly Law Alert, July 2021
"Enforcement of the State and City of Austin COVID-19 Emergency Rules," AM Law Alert, July 2020
"COA DSD Issues Poster for Jobsites with 10+ Workers," AM Law Alert, April 2020
"Recent Legislation Impacting School District Construction Defect Lawsuits," AM Monthly Law Alert, June 2019
"Can I Say That?" State Bar of Texas, Construction Law Section, Construction Law Conference, March 1, 2018
"Austin Approves New Rules for Late Night Concrete Pours," AM Monthly Law Alert, November 2016
"Managing the Risk of Subcontractor Default," (Co-Author), 2014
"How to Save Money in a Construction Lawsuit," Modern Contractor Solutions Magazine (Co-Author), 2014
"How to Avoid a Construction Lawsuit - Practical Tips for General Contractors," Modern Contractor Solutions Magazine (Co-Author), 2013

Presentations/Seminars:

Featured Speaker, AGC Prime Time San Antonio, October 2019
"Recent Construction Legislation," ABC Mid Coast Chapter, June 2019
"Legal Contracting Issues," AGC North Central Texas Chapter, April 2019
"Legal Contracting Issues," AGC of Texas 2018 Houston Prime Time Series, October 2018
"*Construction Contracts – Understanding the Key Provisions*," AGC of Texas Prime Time Series, Construction Law for Public Projects, October, 9, 2018
"*Can I Say That?*" State Bar of Texas, Construction Law Section, Construction Law Conference, March 2018
"*Preparing for the Deluge: Proactive and Reactive Approaches to Minimize the Cost of Defaults*," Surety Association of South Texas, September 27, 2017
Texas Senate Hearing Testimony regarding Senate Bill 807, April 20, 2017
Texas Senate Hearing Testimony regarding Senate Bill 1215, May 15, 2017
"*How to Save Money in a Construction Lawsuit*," Construction Financial Management Association, Heart of Texas Chapter, October 2016
"*How to Save Money in a Construction Lawsuit*," Construction Financial Management Association, Central Texas Chapter, February 2016
"*Managing the Risk of Subcontractor Default*," half-day seminar, September 2014
"*Texas Lien Law: Releases, Notices of Intent, Lien Filings, and What to Do Next*," Construction Financial Management Association, August 2014
"*Scheduling and Schedule Related Claims: The Basics*," Lorman Education Services, May 2014
"*How to Avoid a Construction Lawsuit*," half-day seminar, October 2013
"*Cost Effective Approaches to Dispute Resolution*," Construction Financial Management Association, August 2013
"*Construction Contracts—Understanding Key Provisions*," Halfmoon Education, April 2013
"*How to Avoid a Construction Lawsuit*," Central Texas Chapter of the Construction Financial Management Association, October 2012
"*How to Avoid a Construction Lawsuit*," Greater Austin Contractors & Engineers Association, October 2012
"*New Legislation Affecting the Construction Industry*," Greater Austin Contractors & Engineers Association, September 2011
"*New Legislation Affecting the Construction Industry*," Construction Financial Management Association, August 2011
"Key Contract Provisions" at Lorman Education Services, November 2008
"Project Delivery Systems" and "Risk Assessment in the Contract: Killer Contract Clauses" at Lorman Education Services, July 2008