

ATTORNEY

J. David Arkell

303-292-7913

david.arkell@moyewhite.com



David's areas of practice include alternative dispute resolution and construction law. He arbitrates and mediates construction disputes as a trained and experienced neutral decision maker or facilitator. He advises owners and developers, general contractors, subcontractors, partnerships (public and private) suppliers and sureties on planning and dispute avoidance, as well as dispute resolution through negotiation, mediation, arbitration, and litigation. He drafts and negotiates construction contracts and other documents for both private and public construction projects.

David has arbitrated and mediated many construction disputes as a neutral for more than 30 years; claims have included:

- Contract interpretation
- Breach of contract
- Construction and design defects
- Professional negligence
- Delays
- Damages
- Lost productivity
- Indemnity
- Changes
- Differing site conditions
- Mechanics' liens
- Surety and insurance issues

He is a member of the American Arbitration Association National Regular and Large and Complex Arbitration panels and the American Arbitration Association's Colorado Mediation Panel. He also serves as a neutral mediator and arbitrator in "private" engagements. The size of disputes arbitrated and mediated has ranged from tens of thousands to tens of millions of dollars.

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AREAS OF CONCENTRATION

Advanced Energy
Arbitration and Mediation
Commercial and Retail
Construction
Construction
Energy Construction
Food and Agriculture
Construction
Health Care Construction
Industrial Construction
Litigation and Advocacy
Multifamily Housing and Condo
Construction
Public-Private Partnerships (P3)

EDUCATION

University of Colorado, J.D.,
Colorado Law Review
Claremont McKenna College, B.A.

Arbitration, mediation, and construction litigation

David has more than 40 years' experience helping construction clients resolve disputes through litigation, arbitration, and mediation. David's experience includes representation of:

- A public-entity owner of two major hospital projects in connection with disputes between the owner and the architect; issues included design defects, the standard of care, contractual interpretation and damages.
- The public-entity owner of a significant power plant conversion project where issues included design defects and other defective performance by an engineer, bankruptcy in France of a major supplier, delays any inefficiency analysis, damages, and negotiation of contract documents.
- A private owner of a power generation facility in disputes with the general contractor; issues included delays, defective performance, damages, and contract interpretation.
- A municipality in disputes with a general contractor on a highway project where issues included delays and inefficiencies, differing site conditions, defective performance, damages, and contract interpretation.
- A painting contractor in disputes with the owner of two large apartment complexes; issues included the statute of limitations and other procedural questions, technical analysis of coatings and other expert analysis, contract interpretation, and the measure of damages.
- A major heavy-highway and paving contractor in disputes arising from the construction of runways at Denver International Airport; issues included compliance with specifications, contract interpretation, technical materials testing disputes, damages, and alleged falsification of concrete test results.
- A surety which took over a project upon default of the principal; issues involved the priority of different types of claims against contract balance, the propriety of payments under the payment bond, and subrogation.
- Two subcontractors in disputes arising from the construction of privately owned structures on a publicly owned property where issues included the validity, extent, and value of mechanics' liens, performance and breach of contract, and the measure of damages.
- The operator of an oil well in a dispute with a working interest owner arising from the original mislocation of the well; issues included validity and accuracy of the original government survey, the effect of a government resurvey, interpretation of a joint operating agreement, and existence and measure of damages.

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CREDENTIALS

5280 Magazine Top

Construction Lawyer

2015 - 2023

Best Lawyers®: Construction

Law, 2007 - 2024 Litigation -

Business, 2007 - 2023;

Arbitration, 2023 - 2024;

Mediation, 2023 - 2024;

Litigation - Construction, 2024

Lawyer of the Year, Best

Lawyers®: Construction

Law Denver, 2012 and 2018;

Litigation-Construction Denver,

2015

Colorado Super Lawyer:

Construction - Litigation 2006 -

2010, 2012 - 2019; Alternative

Dispute Resolution, 2020 - 2024

Chambers USA: Construction

Law - Colorado, 2005 - 2014,

2017 - 2023

AFFILIATIONS

American Arbitration Association

National Construction Industry

Arbitration Panels for Regular

and Large and Complex

Cases; Construction Industry

Mediation Panel

American Bar Association,

Forum on the Construction

Industry

- A mining engineering firm in disputes involving several Colorado gold mines; issues included mechanics' liens, contract interpretation and performance, and damages.
- A subcontractor in connection with a road project linked to the Mike O'Callaghan/Pat Tillman bridge below Hoover Dam in Arizona and Nevada; issues included differing site conditions, performance and interpretation of the contract, and entitlement to and the measure of damages.

David also counsels contractors, subcontractors, suppliers, owners, and sureties in all aspects of the construction process from bidding and contract issues through performance and resolution of disputes.



In its 2023 guide, *Chambers USA: America's Leading Lawyers for Business*, Chambers and Partners ranked J. David Arkell as a leading lawyer in Construction Law in Colorado, Band 1.

CONSTRUCTION CONTRACTS

David drafts and negotiates contracts for various entities involved in construction projects around the nation. Representative matters include:

- Prepared a full suite of standard construction contract documents for a major sporting goods retailer for construction projects in all 50 states.
- Drafted and negotiated a design-build general contract, including allocation of risk arising from known expansive soils, for the developer of a major condominium project in Colorado.
- Represented a major regional hospital in connection with contracts for a large expansion program.
- Provided pro bono representation of a private school in Denver in connection with drafting and negotiating a general contract for demolition and construction of several buildings.

SPECIAL ENGAGEMENTS

Because of his extensive expertise in construction contracts and disputes, David is from time to time called upon to serve in unique roles related to construction litigation. Special engagements include:

- Engaged as an expert witness on attorney's fees and mechanics' lien issues.

Associated General Contractors
of Colorado - Former Board
Member, Former member;
Associates Council Former
President

Colorado Bar Association
Alternative Dispute Resolution
Section; Construction Law
Section, Former Chair

Colorado Legislative Committee
Denver Bar Association
Alternative Dispute Resolution
Section; Construction Law
Section, Former Chair

ADMITTED

Colorado State Courts
U.S. Court of Appeals for the
Tenth Circuit
U.S. District Court -
District of Colorado
U.S. District Court -
District of Nevada, pro hac vice
U.S. District Court -
District of Utah, pro hac vice
U.S. District Court -
District of Wyoming, pro hac
vice

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- Appointed by District Court as a Special Master on disputes arising from a failed golf course project; issues included entitlement to and amount of mechanics' liens and damages.

PUBLICATIONS AND ARTICLES

- Author
"5 Critical Clauses Contractors Should Know"
Construction Business Owner, February 2024
- Author
"Part 1: The Lowdown of Significant Risk-Allocation Clauses"
Construction Business Owner, January 2024
- Author
"Part 2: Allocation of Construction Risks Through Contract Clauses"
Colorado Real Estate Journal, November 2023
- Author
"Part 1: Allocation of Construction Risks Through Contract Clauses"
Colorado Real Estate Journal, November 2023
- Author
"Uncertainty in Arbitration Agreements for Contracts"
ENR - Contractor Business Quarterly, October 2016

SPEAKING ENGAGEMENTS AND PRESENTATIONS

David has presented numerous seminars on construction law topics for clients, construction trade groups, and related construction organizations. Topics include delays, damages, differing site conditions, contract clauses, mechanics' liens, bonds, inefficiencies, construction and design defects, scheduling, bid protests, and dispute resolution procedures.