



## Construction

### Members

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### Brach Eichler Knows Construction

**Brach Eichler construction lawyers assist clients in addressing the legal challenges of building, developing, and managing a construction project.** Our team has experience working on complex, high-visibility projects representing private owners and developers, prime contractors and subcontractors, construction holding companies, and construction managers. We will apply our many years of construction law experience and industry knowledge to develop legal strategies that meet your business objectives. This breadth of experience enables us to handle the complete spectrum of issues arising before, during, and after project completion. Additionally, our full spectrum of construction services allows us to meaningfully address all of our clients' needs and help position them for long-term success, get paid, and have a project completed successfully.

Lawyers from the Construction Group frequently work with attorneys from Brach Eichler's other practice areas to address the multitude of issues associated with any project including tax, banking and finance, real estate, environmental and, when necessary, white-collar criminal defense, corporate investigations, and regulatory compliance, or any other relevant issue. The firm's full range of practices enables us to offer clients sophisticated legal services that are designed to the individual needs that arise from doing business in the construction industry.

### Construction Litigation Services

We represent state and national companies, ranging from bid challenges, construction claims, delay claims, disputes about change orders, and construction defect claims.

Clients rely upon Brach Eichler's Construction litigation team. We have earned a reputation of excellence with demonstrated ability to litigate complex issues and position our clients for successful outcomes. We

engage in detailed research and analysis, involving the client in every stage of the process. When the time comes for trial, we are well-equipped and ready.

## **Contract Formation and Performance**

- Developing contract documents that expressly allocate the risk, responsibility, and rewards for proper performance essential to a successful project.
- Advising owners, developers, prime contractors, subcontractors, and other project team members, in forming and managing contractual relationships.
- Handling claims, including changed or unforeseen conditions, delays, disruptions, loss of productivity, acceleration, payment disputes, insurance coverage, and allegations of defective design or construction.
- Calculating extended project costs, overhead using industry-recognized formulas, recommending qualified consultants to do so and, where appropriate, working closely with claims consultants to maximize benefits and minimize risks for our clients.
- Where possible, attempting to achieve an early and fair resolution of construction disputes without the expense and disruption of litigation.
- Engaging in all forms of alternative dispute resolution, including mini-trials, mediations, and arbitrations, and presenting strategies to attempt to resolve disputes promptly, amicably, and short of trial.
- When early resolution is not possible, our attorneys have considerable experience litigating complex, highly technical construction claims in trial and appellate courts at state and federal levels, before contract appeals boards and other administrative tribunals, as well as arbitrating before domestic and internationally sanctioned panels.

## **Construction Labor and Employment Services**

Our Labor and Employment Practice represents management on such far-ranging issues as:

- Equal Employment Opportunity Commission concerns, wage-and-hour, and prevailing wage matters.
- Personnel administration, Americans with Disabilities Act, and Family Medical Leave Act compliance and related matters.
- Assisting clients' compliance with affirmative action requirements and First Source requirements (when applicable) at the bidding stage and with any audits or investigations.
- Providing clients with representation in union employment and labor-related problems.
- Occupational Safety and Health Act (OSHA) Compliance Issues
- Helping clients address the ever-changing health and safety regulations of federal, state, and municipal agencies to protect individuals and property in the workplace.
- Assessing the scope and application of these regulations, the potential liabilities in ongoing project activities, and appropriate responses to inspection issues or the issuance of subpoenas and citations.

## Environmental & Land Use Construction Services

Environmental regulations have an impact on all aspects of property ownership and development.

New Jersey is considered one of the most demanding jurisdictions in environmental regulatory controls. Brach Eichler's Environmental and Land Use Practice advises clients on all aspects of environmental law, assisting companies with challenging environmental, land use, and natural resource concerns as well as in civil and criminal prosecution. Our attorneys have experience in virtually all aspects of environmental practice, including all transactional and litigation services, so we can help our clients navigate federal, state, and local regulations and resolve disputes, in order to allow them to pursue their business objectives. We help assess and then minimize environmental risks in acquiring properties, maintaining operations, and also provide solutions for cost-effective site remediation.

### Managing Environmental Risks

- Our environmental attorneys, understand the environmental risks on construction projects: federal CERCLA and RCRA liabilities and compliance with state statutes and regulations.
- Representing environmental engineers, contractors, and owners in assessing environmental risk and resolving environmental issues in construction projects.

## Bankruptcy Construction Services

Construction is a high-risk business and anyone who has engaged in it for long has encountered the problem of one or more of the various parties engaged in a project either disappearing from the project or filing bankruptcy in the midst of the job.

Businesses today need legal counsel that understands all of the angles, and yet is nimble and crosses the finish line quickly. Brach Eichler's Bankruptcy Practice provides representation and counseling on all aspects of business transactions and business law. We take a holistic approach to representing our clients and have a deep bench of attorneys who focus on various areas of construction law which allows us to provide a full range of services to our clients. Our attorneys provide strategic guidance on all matters related to structuring transactions for a successful solution in the event of a bankruptcy. Our attorneys often work closely with our clients' accountants, stockbrokers, insurance agents, and other financial advisors to achieve the best possible results for our clients. If a client is in need of an advisor, we employ our resources and referral base to assist in locating and engaging other professionals who can contribute to the success of their business.

Typically, for those clients without internal legal resources, we serve as "outside" general counsel, fulfilling the role of business counsel while servicing a broad range of legal needs. For companies that have internal legal staff, yet require specific legal support, we provide the appropriate insight and capability to enable them to achieve their business objectives. In either case, the real-world experiences of our attorneys allow us to deliver practical, effective solutions and counsel, rather than mere legal theory. We pride ourselves on being strategic partners in the success of our clients' businesses.

When necessary, the group works in collaboration with the Firm's attorneys in other practice areas, such as business transactions, real estate, labor and employment, and litigation, in order to successfully—and quickly—achieve our clients' business objectives.

## Construction Claims Prevention

Whenever possible, our litigators use their business acumen to help clients develop strategies to avoid litigation altogether. Our vast experience handling large-scale complex litigation in multiple jurisdictions has given us unique insight into what our clients can do proactively to minimize their legal exposure. Our experienced construction litigation lawyers have developed a keen sense of why disputes arise, allowing us to counsel our clients on how to best avoid the disputes in the first place. Even as we focus on the lawsuit at hand, we are constantly thinking about strategic remedial measures our clients can implement to improve their compliance and reduce future risk.

- Monitoring projects during construction to ensure awareness of issues and potential pitfalls, and to assist in the prevention or resolution of claims.
- Presenting seminars and written materials to our clients to educate their project managers and superintendents on the common pitfalls encountered during a construction project.
- Reviewing contract forms and procedures so clients are better able to avoid many situations that might result in claims or delays.

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## Our Construction Representative Matters

- Successfully compelled a national general contractor's insurance carrier, in a construction defect claim, to pay \$500,000 in damages for what was argued to be a "Covered" claim, which also included the payment of over \$50,000 in legal fees and costs incurred by the general contractor.
- Successfully defended a construction client against the Federal Occupational Safety and Health Review Commission (OSHA). Our client received numerous violations from OSHA over a five year time period, culminating with the Federal Administrative Law Judge ruling in favor of OSHA for a regulatory violation. Brach Eichler won on appeal unanimously reversing the ALJ's decision that the client's employee was injured performing maintenance as opposed to construction-related services. By reversing the ALJ, the Commission ruled that OSHA and the ALJ could not interpret an unambiguous regulatory standard based upon what OSHA "might have intended but did not express because it must give employers fair notice of what is required for compliance."
- The firm represented a construction contractor facing claims by statewide labor union's benefit funds seeking to compel arbitration of claims for benefit funds contributions. After obtaining a preliminary injunction in the District Court barring arbitration on the claims, the Third Circuit Court of Appeals held that the contractor had a sufficient claim for fraud in the execution of the alleged contract requiring the District Court, not the arbitrator, to adjudicate the claims.
- The firm represented a construction contractor facing claims by the statewide labor union's benefit funds seeking to enforce previous judgment entered against a defunct entity. After obtaining a preliminary injunction barring the claims from proceeding in arbitration, the firm obtained summary judgment dismissing the claims in their entity.
- The firm represented a contractor sued by a project owner to discharge a construction lien and for Consumer Fraud Act violations. The firm obtained dismissal of the lawsuit pre-answer and compelling arbitration in Texas pursuant to a choice of law and arbitration provision in the contract.
- Seven years after NES went out of business, one of NES' former owners partnered with another

individual to form Nacirema Demolition & Recycling, Inc. (“NDR”) to serve as a general contractor for small-scale demolition projects. Because of its name “Nacirema”, a similar owner, its work in demolition, and because the CBA’s auto-renewal provision continued due to NES’ failure to terminate, the Funds scheduled an Arbitration against NDR claiming that as a successor/alter-ego of NES, NDR and its owners are therefore bound to a CBA with the Union and liable for the unpaid \$530,000 Arbitration Award.

- Represented clients in complex bankruptcies involving high profile retail chains, such as J.C. Penny, Sears and Kings Supermarkets. These bankruptcies represent retail stores effected by the pandemic and placed the firm’s clients at great risk of financial loss. The centerpiece of this work was enforcing the client’s rights under a myriad of bankruptcy code provisions in order to ensure complete protection of their rights and to recover monies owed. In other related bankruptcy work, the firm was engaged by multiple subcontractors to pursue their rights in the bankruptcy of Hollister Construction Services, LLC. This bankruptcy affected some of the state’s largest construction projects and impacted the financial rights of many of the subcontractors that were contracted to do the work. Brach Eichler represented a number of these subcontractors successfully ensuring that their rights were protected, recovered payments for work performed and successfully defended and negotiated settlement for payments sought by the debtor to be clawed back.

*\*Results may vary depending on your particular facts and legal circumstances.*