



Construction & Engineering

We have extensive experience resolving the full range of claims that can arise before, during and after construction and engineering projects. Our in-depth familiarity with the construction and engineering industries coupled with our ability to comprehend and break down the legal issues that arise in these industries into comprehensible and digestible facts enable us to craft persuasive and logical arguments that all involved parties can understand.

Our construction and engineering clients come from both inside and outside of the industry—from owners and employers, contractors and sub-contractors, municipal entities, designers, and engineers, to the companies who hire these players for their construction needs.

- ***In re Flint Water.*** Chaired the Expert Committee and Court-appointed to the Executive Committee coordinating class actions in state and federal courts on behalf of residents of Flint, Michigan who are pursuing claims for personal injuries and property damage arising from the water crisis resulting from lead contamination in the city's water supply. To date, the team has secured court-approved settlements valued at \$626 million with multiple governmental defendants, including the state of Michigan. Litigation continues against other defendants, including two private engineering firms charged with professional negligence.
- ***NRG Renew v. SunPower.*** Represented SunPower Corporation in a dispute against NRG Renew regarding a complex construction and financing arrangement. The parties developed one of the world's largest utility-scale solar facilities, California Valley Solar Ranch (CVSR). As one aspect of the project financing, the parties sought a cash grant reimbursement from the US Department of Treasury. Treasury awarded less than the amount sought by the parties, and NRG brought this lawsuit asserting that SunPower must indemnify NRG for the shortfall in Treasury's award, which SunPower disputes. SunPower asserted crossclaims against NRG alleging approximately \$65 million in damages caused by NRG's breach of the underlying agreements. The case was resolved on mutually agreeable terms.
- ***Stolt Offshore Services v. ABB Lummus Global.*** Successfully defended ABB Lummus Global, and its joint venture with Heerema Zwindrecht, which built and delivered a \$700 million offshore exploration and

development platform, in a multi-million-dollar construction dispute with one of the project's subcontractors. The case was arbitrated before a three-member panel pursuant to the UNCITRAL rules. We fully prevailed for our client—the panel rejected all of the plaintiff's claims and awarded attorneys' fees and costs to ABB.

- ***Westlake Chemical v. James Construction et al.*** Secured a winning verdict for Westlake Chemical Corporation following a contentious jury trial. After a series of contractor safety issues, including a fatality, Westlake Chemical was compelled to remove James Construction's mechanical group from a \$400-million-plus construction project, resulting in delays and other costs, and file suit to recover damages. The jury ruled in favor of all of Westlake's provisions, awarding more than \$4.1 million to Westlake, and reducing the \$15 million counterclaim to \$1.2 million. The Fourteenth Court of Appeals upheld Westlake's \$4.1 million award and vacated the opposing party's \$1.2 million counterclaim.
- ***Engineers and Constructors Inc. v. Gray Construction.*** Represented Mitsui Engineering and Shipbuilding subsidiary, Engineers and Constructors, Inc., in a \$100 million construction dispute. With less than two hours' notice, our team defeated Gray Construction's attempted TRO and beat back its efforts to disrupt our client's construction project. After we stepped in, Mitsui was able to complete the construction project and negotiate a favorable, confidential settlement with Gray Construction.
- ***Dig Tech v. Star Operations and Great American Insurance Company.*** Tried and won a breach of contract lawsuit on behalf of Austin-based Dig Tech against San Antonio-based Star Operations. Dig Tech alleged that Star Operations agreed to pay for construction work on the State Highway 130 Tollway. Star Operations claimed it did not have to pay for the work because Dig Tech did not secure a signed contract. The jury ruled unanimously in favor of Dig Tech and rejected counterclaims for fraud and tortious interference asserted by Star Operations. The case was later affirmed in appeals court.
- ***SM Energy v. Endeavour.*** Defended Endeavour International in a construction-related breach of contract case. SM Energy alleged that Endeavour had breached a contract to acquire a pipeline company and numerous oil and gas properties in Pennsylvania. Susman Godfrey argued that Endeavour had a contractual right to terminate the contract without penalty because the pipeline was not constructed in accordance with all applicable laws and regulations. The case settled shortly before trial.
- ***Houston Refining v. Deep South Crane.*** Represented a subsidiary of LyondellBasell in a \$48 million suit arising from the collapse of one of the largest cranes in the world, which resulted in an extended shut down of refinery operations and delayed a major turnaround construction project. Before Susman Godfrey was hired, the Court ruled that the economic loss rule barred Lyondell from recovering lost profits—eliminating over 95% of the client's damages. Our team persuaded the Court to overturn its prior order, restoring Lyondell's right to seek 100% of

its damages. The case settled on confidential terms shortly before trial.

- ***TOTAL Petrochemicals v. Team Industries.*** Represented TOTAL Petrochemicals (TOTAL) in a dispute against Wisconsin-based Team Industries (Team), a subcontractor who fabricated pipe for TOTAL's multi-billion-dollar expansion of its petrochemical facility in Port Arthur, Texas. TOTAL accused Team of improper billing for pipe fabrication on a \$120 million contract, and Team accused TOTAL of underpaying on the contract. The case involved novel issues regarding how prices for labor and materials should be calculated under a "list and discount" pricing structure. The case also involved the interpretation and application of a "most favored nation" clause in the parties' contract. The case settled on confidential terms.
- ***FMC International v. ABB Lummus Global.*** Represented ABB Lummus Global Inc. in a \$100+ million construction case. Our briefing resulted in dismissal of a tort cause of action on which FMC had based a \$90 million damages claim. Later, another brief resulted in a dismissal of a RICO cause of action on which FMC had based a claim for more than \$25 million in damages. The Court ultimately dismissed all of FMC's claims in full.
- ***Confidential Engineering Breach of Contract Suit.*** Settled a \$20 million breach of contract lawsuit over a project to expand the capacity of a petrochemical plant. Our client alleged that the contractor, a global engineering services and construction company, breached the parties' engineering and procurement contract by failing to meet industry and contractual standards and failing to comply with its warranties. Armed with a detailed certificate of merit prepared by our professional engineering experts, we also alleged claims for negligence and engineering malpractice based on the contractor's schedule mismanagement, delays, failure to use 3D laser scans, and problematic structural and isometric drawings. The settlement agreement does not allow disclosure of the parties' names and the dollar amount of the settlement.
- ***Port of Port Arthur Navigation District v. Lanier & Associates Consulting Engineers.*** Represented the Port's governing authority against several engineering and construction companies for negligent design and construction of large port facilities. Our team achieved favorable settlements following extensive discovery that allowed the Port to re-build the facilities.
- ***City of Austin v. Houston Lighting & Power.*** Represented the City of Austin in a lawsuit alleging flawed construction and management practices that caused the South Texas Nuclear Project's two reactors to be shut down by the Nuclear Regulatory Commission. The case settled after all parties had rested and while the jury was deliberating.
- ***In re Rio Piedras Explosion Litigation.*** Defended Enron over allegations that a propane gas pipeline owned by Enron in San Juan, Puerto Rico leaked gas that accumulated in the basement of a commercial building and exploded, killing several and seriously injuring dozens. Our defense team focused on other possible causes of the explosion, which focused in

large part on the construction of the building where the explosion took place and the damage to the structure. The matter settled in the immediate aftermath of Enron's bankruptcy right before jury selection.

- ***Positron v. KBRWyle.*** Served as lead counsel to construction company, KBR, in a case filed by Positron Systems against its subsidiary Wyle Laboratories over theft of trade secrets claims. We developed legal defenses that hadn't been asserted by prior counsel and tried the case to a jury verdict, with the jury rejecting opponent's claim and the Court striking nearly all plaintiff's damages.