



Andrew D. Ness

Partner

Andrew Ness assists both owners and contractors with respect to troubled projects, solving complex construction and design-related problems without need for formal dispute resolution whenever practicable. In litigated matters, he has served as lead counsel on a wide variety of large construction disputes that were resolved in federal and state courts, and via both domestic and international arbitrations. Mr. Ness also has extensive experience in resolving disputes through the use of mediation and other alternative dispute resolution techniques, and has drafted and negotiated design and construction contracts for a wide range of major projects around the world.

Mr. Ness' project experience encompasses a broad range of energy, industrial and process, institutional, commercial, government and building projects across the United States and numerous other countries in Europe, South America, Asia and the Middle East.

Mr. Ness been recognized by both *Chambers, USA* and *Best Lawyers in America* since they commenced coverage of Construction Law as a specialty, and is listed also in *Who's Who Legal* (2009 and 2008—Construction), and *Washington, DC Superlawyers* (Top 50 Washington, DC Lawyers—2008).

Andrew D. Ness

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ADMISSIONS

California
District of Columbia
Virginia

EDUCATION

Harvard Law School (JD, 1977),
magna cum laude

Harvard Journal on Legislation,
Articles Editor (1976-77)

Stanford University (BSEE, 1974),
Tau Beta Pi, with distinction

CLERKSHIP

Hon. Robert F Peckham, Chief
Judge, United States District
Court for the Northern District of
California (1977-1978)

REPRESENTATIVE MATTERS

- *NIH Clinical Research Center – Bethesda, MD.* Developed and implemented a detailed plan to remove and replace the existing Construction Manager nine months into construction of a 900,000 sq. ft. hospital/research center, after the Program Manager and Owner decided that they could not reach agreement with the CM on a realistic Guaranteed Maximum Price and completion schedule. After extensive preparations, a no-cost termination and switch to a new CM was successfully executed, keeping trade contractors working while avoiding litigation.
- *Spent Nuclear Fuel Storage Project – Idaho Falls, ID.* Assisted a DOE contractor that was in danger of defaulting on its \$350 million contract in developing a detailed legal/lobbying strategy to avoid both default termination and the need to perform the balance of the contract. Successfully negotiated a no-cost termination of the unperformed contract obligations, saving the contractor from potential default liabilities well exceeding \$100 million.
- *Nuclear Waste Processing Plant – Oak Ridge, TN.* Developed and

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implemented a strategy to either obtain a convenience termination or convert a long-term, fixed-price performance contract to a cost-reimbursable basis. Successfully negotiated a conversion to cost-reimbursable combined with resolution of all prior unpriced changes, enabling the contractor to be paid immediately for the effects of DOE's ongoing operational changes.

- *UNCITRAL Arbitration – Habibullah Coastal Power v. Fiat Avio SpA.* Successfully defended the EPC Contractor that constructed an air-cooled combined-cycle power plant in a remote area of Pakistan from claims for \$66 million in delay liquidated damages and alleged plant defects, while also recovering \$8 million in deferred payments owed to the Contractor.
- *UNCITRAL Arbitrations – POSVEN HBI Plant, Venezuela.* On behalf of the EPC Contractor, successfully defended over \$100 million in claims by the owner, while also pursuing major disputes with the process supplier and two erection contractors. Dispute resolution efforts encompassed three international arbitrations, US District Court litigation, and Venezuelan litigation.
- *McDevitt & Street Co. v. Marriott Corp.* Refuted claims for changes and delays by the contractor and recovered on counterclaim for actual delay damages due to lost sale opportunity on behalf of the owner.
- *Thermo Electron Corp, U.S. Filter Corp. & Raytheon Engineers & Constructors, Inc. Arbitration.* Three party arbitration regarding the wastewater treatment system for a waste paper recycling plant. Succeeded in proving that the wastewater treatment subcontractor was primarily responsible for the collapse of a trickling filter and consequent damages.
- *Marriott Corp. v. Thomas P. Harkins, Inc.* Successfully defended the default termination of the construction contractor for a large retirement community, and recovered excess costs of completion, following an 11-week trial in state court.
- *TVA Cumberland FGD Retrofit Project, TN.* A combination of significant delays early in this \$500 million scrubber retrofit project, and a major defective material problem encountered at startup, led to a series of substantial disputes between the EPCM contractor and various trade contractors. On behalf of the EPCM contractor, developed and implemented a claims resolution strategy that led to a series of negotiated or mediated settlements, using a variety of ADR methods. The only dispute to require any kind of binding resolution process was resolved by way of an abbreviated, baseball-type arbitration in lieu of a US District Court trial.
- *Petrotrin Oil Refinery Reconstruction – Trinidad.* Designed and

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obtained the state-owned oil company's agreement to utilize a custom-tailored form of mediation, geared to local political realities, for a dispute over the reconstruction of a major oil refinery unit. This successfully led to a resolution in which the contractor (a British-American joint venture) recovered the entirety of its additional costs.

PROFESSIONAL AFFILIATIONS

- American Bar Association, Forum on the Construction Industry; Chair, Publications Committee (2008–10); Governing Committee member (2007-09)
- Fellow, American College of Construction Lawyers
- Advisory Board Member, The Construction Contractor, Bi-weekly publication of the West Group

PUBLICATIONS & SPEAKING ENGAGEMENTS

ARTICLES

"Closing Arguments: The Law and Practical Considerations." *The Construction Lawyer* Vol. 24, No. 4 (2004). Co-author.

"Arbitration Developments: Defects and Solutions." *The Construction Lawyer* Vol. 22, No. 3 (2002). Co-author.

"Trends in Contractor Liability for Hazardous Waste Cleanups – The Current Legal Environment." *Public Contract Law Journal* Vol. 22, No. 581 (1993). Co-author.

BOOKS

Federal Government Construction Contracts. American Bar Association (2003). Editor.

International Construction Law. American Bar Association (2009). Editor.