

FOULSTON

ATTORNEYS AT LAW

CONSTRUCTION



OVERVIEW

For more than 30 years, Foulston Siefkin's Construction Practice Group has provided representation to clients working on some of the most significant projects in Kansas and beyond. These include skyline-defining buildings and community landmarks such as university education and sports facilities, hospitals, power and water treatment plants, government facilities, hotels, factories, highways, shopping centers, corporate headquarters, and office complexes.

The firm's Construction Practice Group offers a full range of advisory, transactional, and litigation services to contractors, subcontractors, architects, design professionals, builders, suppliers, public institutions, company owners, and project managers. The practice, one of the largest and most comprehensive in Kansas, has earned a national reputation for excellence and a place among the first-tier firms for construction law as ranked by *U.S. News and World Report* and *Best Lawyers*. In addition, *Chambers USA*, *Benchmark Litigation*, and *Super Lawyers* regularly honor the practice's attorneys.

Foulston Siefkin's talented construction attorneys deliver sound, practical counsel that is designed to address the business goals of each client in a cost-effective, efficient manner. The practice's many capabilities encompass:

- Design and Construction Contract Drafting and Negotiation
- Professional Errors & Omissions Defense
- Construction Change Negotiations
- Construction Defect Litigation
- Government Contract Claims
- Construction Insurance Advice and Dispute Resolution
- Professional Licensing and Disciplinary Proceedings

Clients regularly seek the firm's advice on ways to mitigate the threat of litigation, address cost overruns, and implement best-practice processes into their day-to-day operations. While Foulston Siefkin

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construction lawyers are skilled in resolving disputes out of court, there are instances when litigation is unavoidable. Whether appearing before a state board, an arbitration panel, in trial or appellate court, or before the U.S. Court of Federal Claims or the U.S. Boards of Contract Appeals, the practice's lawyers are known for presenting persuasive arguments that advance clients' positions.

AREAS OF REPRESENTATION

Contract Drafting and Negotiation

We counsel with contractors (both prime and sub), design professionals, and owners in the development of project-appropriate contracts for projects of all scales.

Professional Errors & Omissions Matters

We regularly defend architects and engineers from both insured and uninsured malpractice claims involving personal injury, property damage, and economic loss.

Construction Change Negotiations

We counsel with contractors and owners in evaluating the cost and schedule impact of differing site conditions, cardinal changes, project delays, and owner-directed changes.

Construction Defect Litigation

At Foulston Siefkin trial work – whether in litigation or arbitration – is a hallmark of our practice. Our construction group not only prepares but also frequently tries construction defect cases. Recent experiences include disputes over failed roofing and other building enclosure systems, direct buried system insulation; heating, ventilating, and air conditioning systems; wastewater treatment equipment; electrical generating equipment; and digital controls.

Government Contracts

We represent contractors and subcontractors in government contract claims before Kansas Department of Transportation, the U.S. Court of Federal Claims, and the U.S. Boards of Contract Appeals.

Construction Insurance Matters

Our insurance expertise includes the interpretation of and, where necessary, litigation over, commercial general liability (CGL) coverages and exclusions for contractors.

Professional Licensing and Discipline

We represent Kansas architects, engineers, and surveyors in investigations conducted by and disciplinary proceedings before the Kansas State Board of Technical Professions.

RELATED LINKS

- [McGraw Hill Companies construction home page](#)
- [Engineering News Record, a McGraw Hill Company](#)

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- American Institute of Architects contract documents
- The Associated General Contractors of America
- The Associated General Contractors of Kansas
- The Wichita Area Builders Association

EXPERIENCE

- Successfully defended a design defect and construction administration claim against the architect for a medical office building in Newman Memorial Hospital v. Walton Construction Co., et al, 37 Kan. App. 2d 46, 149 P.3d 525, (2007) rev.denied
- Defense counsel for the project design team in the successful trial court defense against a \$6.5 million economic loss claim (arising from RFI's) made by the general, mechanical, and electrical contractors on the Kansas State University Farrell Library renovation and expansion project.
- Counsel for the prime contractor and its surety in the successful defense of an \$11 million construction defect claim filed by the owner State of Kansas.
- Plaintiff's counsel in the successful 1998 federal court trial in Hatch & Kirk Power Services Corp. v. City of Girard, involving the expansion of a municipal electrical generating plant.
- Co-counsel to the owner in a \$15 million cost and schedule dispute over the construction of the Cardinal Health corporate headquarters in Dublin, OH.
- Special counsel to the utility owners for evaluation of construction at the Wolf Creek Nuclear Generating Station.
- Converted a government termination for default to a termination for convenience, then established the basis for a bad faith termination claim, in Industrial Coatings, Inc. v. United States.
- Developed the design and construction contracts for Exploration Place, Wichita, KS

PUBLICATIONS

ISSUE ALERTS

2019

Kansas Supreme Court Ruling Uncaps Damages for "Pain and Suffering"

2014

Why did the Lesser Prairie-Chicken Cross the Road?

2014 Kansas Legislature Redefines the Practices of Architecture, Engineering, and Landscape Architecture

2010

2010 Legislature Changes Prompt Payment and Alternative Delivery Statutes

2008

New Construction, Dealership, Franchise, & Transportation Contracts in Kansas Can No Longer Contain Commonly-Used Liability Indemnity Provisions

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2007

2007 Legislature Sets New Rules for Payments on Public Projects

ARTICLES

2024

Building a Better Construction Contract

-TK Business Magazine

2009

Chapter on Like Kind Exchanges

-KBA Handbook, Kansas Real Estate Practice and Procedures

New Contracts in Kansas Can No Longer Contain Commonly Used Liability Indemnity Provisions

-LJN'S Franchising Business & Law Alert

PRESENTATIONS

2011

Trends in Owner and Subcontractor Contracts (Construction Leadership Council)

2009

Contracts and Risk Management for Engineers (ACEC)

2008

Contracts and Risk Management for Engineers (ACEC)

2007

Contracts and Risk Management for Engineers (ACEC)

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