Construction Litigation Desk Reference:

A State-by-State Compendium



All views, opinions and conclusions expressed are those of the authors, and do not necessarily reflect the opinion and/or policy of DRI and its leadership.



© 2010 by DRI 55 West Monroe Street, Suite 2000 Chicago, Illinois 60603

All rights reserved. No part of this product may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system, without the express written permission of DRI unless such copying is expressly permitted by federal copyright law.

Produced in the United States of America

Table of Contents

DRI Officers	iv
DRI Directors	iv
DRI Mission, Diversity Statements	v
Foreword	vi

Alabama1	Montana	.51
Alaska	Nebraska	54
Arizona41	Nevada	.55
Arkansas	New Hampshire	.57
California67	New Jersey	.59
Colorado	New Mexico	.61.
Connecticut	New York	629
Delaware143	North Carolina	643
District of Columbia	North Dakota	67.
Florida165	Ohio	689
Georgia	Oklahoma	702
Hawaii	Oregon	729
Idaho	Pennsylvania	743
Illinois	Rhode Island	767
Indiana	South Carolina	783
Iowa	South Dakota	799
Kansas	Tennessee	815
Kentucky	Texas	829
Louisiana	Utah	851
Maine	Vermont	871
Maryland	Virginia	889
Massachusetts413	Washington	907
Michigan	West Virginia	917
Minnesota	Wisconsin	929
Mississippi	Wyoming9	949
Missouri	•	



DRI Officers

Immediate Past President
MARC E. WILLIAMS
Huntington, West Virginia

President
CARY E. HILTGEN
Oklahoma City, Oklahoma

President-Elect R. Matthew Cairns Concord, New Hampshire

First Vice President
HENRY M. SNEATH
Pittsburgh, Pennsylvania

Second Vice President
Mary Massaron Ross
Detroit, Michigan
Secretary-Treasurer
Charles H. Cole
Chicago, Illinois

DRI Directors

Steven L. Barney Petoskey, Michigan

Lori V. Berke Phoenix, Arizona

JOANNE T. BLACKBURN Seattle, Washington

Donna L. Burden Buffalo, New York

James M. Campbell Boston, Massachusetts

David E. Chamberlain

Austin, Texas

Francisco J. Colon-Pagan, Sr.

San Juan, Puerto Rico

Sandra L. Corbett Edmonton, Alberta, Canada

F. Thomas Cordell Chickasha, Oklahoma

Steven F. Coronado Kansas City, Missouri

Bruce A. Cranner

New Orleans, Louisiana

JOHN E. CUTTINO

Columbia, South Carolina

Evelyn Fletcher Davis

Atlanta, Georgia

Kevin Driskill

Oklahoma City, Oklahoma

James D. Holland Jackson, Mississippi

Robert W. Harrison San Diego, California

Robert D. Hunter

Birmingham, Alabama

KEVIN J. KELLY New York, New York

MICHAEL T. LUCEY

San Francisco, California

Neva G. Lusk

Charleston, West Virginia

BROOKS R. MAGRATTEN
Providence, Rhode Island

JAMES L. McCrystal, Jr.

Cleveland, Ohio

Јони J. McDonough

New York, New York

Russel Myles

Mobile, Alabama

HAROLD L. PETERSEN

Salt Lake City, Utah

Laura E. Proctor

Nashville, Tennessee

Simeon D. Rapoport

Beaverton, Oregon

JOSEPH W. RYAN, JR.

Columbus, Ohio

STEVEN R. SCHWEGMAN

Saint Cloud, Minnesota

JOHN PARKER SWEENEY

Baltimore, Maryland

ROBERT E. TAIT

Columbus, Ohio

J. MICHAEL WESTON

Cedar Rapids, Iowa

JOHN S. WILLARDSON

Wilkesboro, North Carolina

Construction Litigation Desk Reference: A State-by-State Compendium

DRI Mission, Diversity Statements

DRI is the international membership organization of all lawyers involved in the defense of civil litigation. DRI is committed to: enhancing the skills, effectiveness, and professionalism of defense lawyers; anticipating and addressing issues germane to defense lawyers and the civil justice system; promoting appreciation of the role of the defense lawyer; and improving the civil justice system and preserving the civil jury.

DRI is the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation.

Diversity is a core value at DRI. Indeed, diversity is fundamental to the success of the organization, and we seek out and embrace the innumerable benefits and contributions that the perspectives, backgrounds, cultures, and life experiences a diverse membership provides.

Inclusiveness is the chief means to increase the diversity of DRI's membership and leadership positions. DRI's members and potential leaders are often also members and leaders of other defense organizations. Accordingly, DRI encourages all national, state, and local defense organizations to promote diversity and inclusion in their membership and leadership.

Foreword

The DRI Construction Law Committee is pleased to present *Construction Litigation Desk Reference*. This fifty state guide to construction litigation is written for those who handle construction litigation claims or manage construction litigation risk.

The *Desk Reference* provides a concise analysis of the issues regularly encountered in construction litigation including: insurance coverage, contract law, torts, delay claims, lien law, and damages.

The publication is divided by state, and each state chapter is authored by an attorney with expertise in construction litigation. The goal of the desk reference is to provide a quick reference of the law on a given topic to enhance the reader's baseline knowledge and provide for more productive claim handling and strategy discussions with counsel.

Recognition is owed to the Construction Law Committee for its support with this project, the authors who provided the material for each state, as well as Lynn Conneen and the entire staff of DRI for their invaluable support and guidance.

Sean W. Martin

DRI Construction Law Committee Publications Chair
February 2010

Colorado

David M. McLain

Sheri H. Roswell

The Colorado section was written by Sheri H. Roswell, W. Berkeley Mann, Jr., Bret Cogdill, Derek L. Lindenschmidt, and Shawn A. Eady, attorneys of the firm of Higgins, Hopkins, McLain & Roswell, LLC, a firm that specializes in construction defect and general civil litigation throughout Colorado. David M. McLain, a founding member of the firm, compiled and edited the materials. Mr. McLain has a general civil litigation practice with an emphasis on the defense of complex construction defect lawsuits on behalf of developers and general contractors.