

June 2020



CONSTRUCTION
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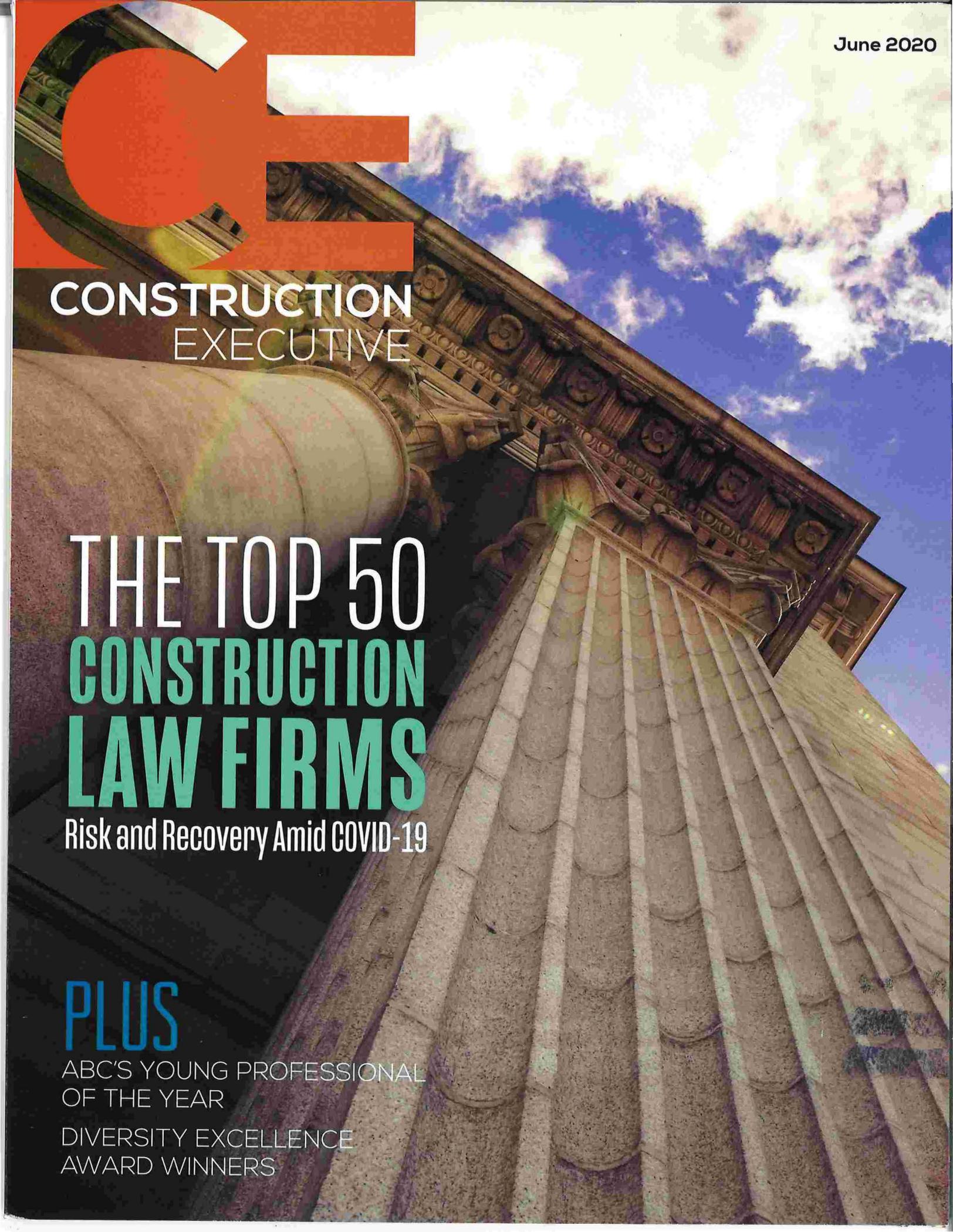
THE TOP 50
CONSTRUCTION
LAW FIRMS

Risk and Recovery Amid COVID-19

PLUS

ABC'S YOUNG PROFESSIONAL
OF THE YEAR

DIVERSITY EXCELLENCE
AWARD WINNERS



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The 14th Annual
Construction Law
Special Section

THE TOP 50 CONSTRUCTION LAW FIRMS

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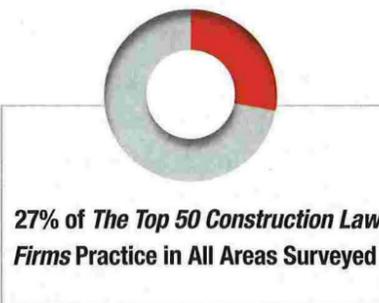
The Top 50 Construction Law Firms™: Navigating the Industry Through a Pandemic

BY CYBELE TAMULONIS

The verdict is in. Having the counsel of an experienced legal ally has never been more crucial to business survival than right now.

In just the first four months of 2020, the COVID-19 pandemic wreaked havoc in every sector of the construction industry. Activity at thousands of jobsites came to a virtual standstill as one state after another enacted shelter-in-place orders. Multitudes of new projects were delayed or canceled in response to market uncertainty. While industry groups, including Associated Builders and Contractors, lobbied federal, state and local government officials to declare construction an essential business, Congress raced to enact historic stimulus legislation. But by the end of April, the industry had already shed nearly one million jobs, the steepest plunge in construction payrolls since the Great Depression.

It was during this unprecedented environment that *Construction Executive's* survey for the second annual U.S. ranking of *The Top 50 Construction Law Firms* was in the field. While legions of general contractors and subcontractors were scrambling to review contract documents with their trusted advisors for delay, default and force majeure clauses, *CE's* editorial team was reaching out to dozens of attorneys at the nation's top construction law firms to learn how they were



advising their clients in the wake of the novel coronavirus.

SAFETY FIRST

The first mandate to avoid risk is to ensure the safety of employees.

"Prior to the outbreak, the most pressing concern was how and where to find skilled workers. Now the concern has shifted to protecting their health and safety," says David Pugh, partner at Bradley Arant Boult Cummings LLP.

Creating a safe environment in the age of a novel coronavirus is easier said than done. Projects are subject to new EEOC regulatory measures as well as OSHA recommendations that include keeping field workers six feet apart, wiping down tools after use and shortening meetings.

"There are great risks for onsite performance where it's often difficult to maintain specified social distances and properly perform," says Jim Dickson, construction attorney for Adams and Reese, LLP.

"Safe policies in April 2020 may not be safe policies in July 2020 or thereafter," says Jeremy Brummond, attorney at Lewis Rice LLC.

"Employers need to recognize that information on the coronavirus is changing daily. Policies should be revisited and aligned with generally accepted scientific understanding. Safety measures meant to protect workers from coronavirus must

be coordinated with other safety protocols to avoid additional risks being created."

"What should you do if a worker shows up sick and works for a day before their symptoms worsen and become obvious?" asks David Peden, partner at Porter Hedges LLP. "Do you shut the whole job down, just that crew, or only send that laborer home? In safety briefings, emphasize the importance of staying home as soon as you have any symptoms. Document that you said this in your daily reports."

General contractors must carefully monitor subcontractor adherence to coronavirus policies or risk potential liability advises Frank Elmore, president of Elmore Goldsmith.

"Safety policies are only as effective as the implementation," agrees Kevin Hudson, partner at Hudson Parrott Walker. "Every day, all members on the job need to be forced on enforcement."

Even with best practices in place, litigation can still arise. Dickson advises contacting insurance carriers now to assess the scope of coverage for potential claims alleging that a firm's negligence practices led to the spread of the virus.

WORKFORCE WORRIES

Robots may build the projects of the future, but today's construction projects depend on people and COVID-19 has only magnified construction's pre-existing condition, its skilled labor shortage. Project managers and craft professionals, the essential workers on construction's front lines, are understandably concerned about the virus.

"While most construction projects are continuing to move forward during quarantine, clients are experiencing reductions in force," says Gina Vitiello, attorney at Chamberlain, Hrdlicka, White, Williams & Aughtry. "Many

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-David Pugh, Partner, Bradley Arant Boult Cummings LLP

Top 10 Law Firms Ranked by Number of States Admitted to Practice



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clients are using labor providers to supplement their own workforce."

As if the labor shortage wasn't worrisome enough, employers must now continuously monitor the changing legal landscape and be nimble enough to quickly adapt existing employee policies to comply with newly passed COVID-19 laws, regulations and executive orders across multiple states, counties and cities.

"Policies related to employee termination, furloughing, sick and

family leave, and workplace protections should be evaluated and changed where necessary," says David Santomauro, leader, construction law & litigation team at Gibbons PC. "Failure to abide by these new laws could expose employers to potential liability."

The needs of multi-generational workers are another key consideration when reviewing employee policies. "Older skilled crafts workers may wish to shelter at home," says Dickson.

"Termination of such persons runs the risk of age discrimination claims."

Methodology for The Top 50 Construction Law Firms

CE developed *The Top 50 Construction Law Firms* ranking by asking hundreds of U.S. construction law firms to complete a survey. The data collected included: 1) 2019 revenues from the firm's construction practice; 2) number of attorneys in the firm's construction practice; 3) percentage of firm's total revenues derived from its construction practice; 4) number of states in which the firm is licensed to practice; 5) year in which the construction practice was established; and 6) The number of AEC clients served during fiscal year 2019. The ranking was determined by an algorithm that weighted the aforementioned factors in descending order of importance. Note: A sizable number of law firms elected not to share revenues, which affected their ranking. For more information, contact surveys@magazineexperts.com.

“First and foremost, contractors should focus on the health and safety of their employees,” says Philip Beck, senior partner at Smith, Currie & Hancock LLP. “A close second objective is to ensure the survival of the company. Owners and contractors need to recognize that a virus that was previously unimaginable is now a reality.”

CASH IS STILL KING

With economic uncertainty looming large, contractors must gain a firm grip on payment rights and conserve funds to weather the downturn.

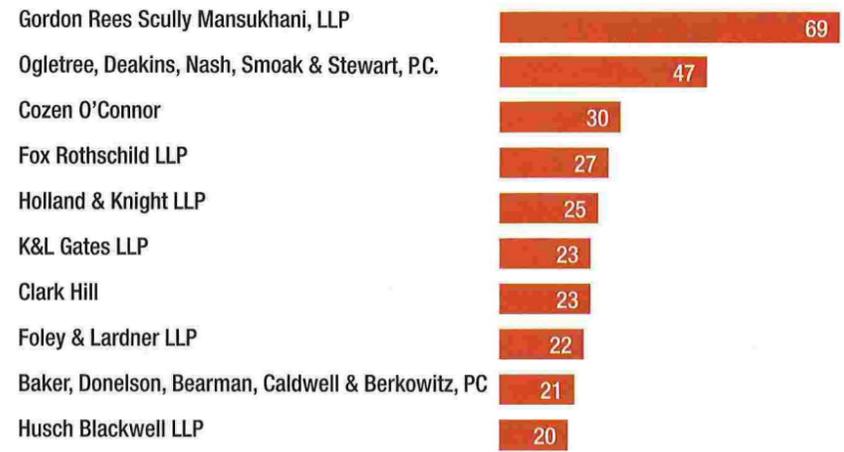
“In the midst of the COVID crisis, our clients are increasingly concerned that project funds remain available to support the cash flow required for all progress and final payments,” says Joshua Levy, partner and co-head of the construction practice at Husch Blackwell, LLP. “We have seen an inordinate number of clients experience delays caused by funding interruption.” Levy points out that contract documents often lack clauses requiring owners to provide proof of their ability to pay.

“A change that can be negotiated to encourage payment is a provision that allows the accrual of interest plus the recovery of attorneys’ fees,” says David Hammargren, head of the construction and surety practice at Larkin Hoffman.

Getting paid is also the most pressing concern for Jackie Maloney’s construction clients at REAL Law, LLC. “This involves confirming owner financing, negotiating payment terms, protecting and enforcing lien and bond rights, and providing creative financing solutions to customers,” she says.

Contractors should not be shy about collecting what’s owed to maintain cash flow. When red flags are raised, it’s important to act quickly before the opportunity to recover payment is lost. While some may be hesitant to file a

Top 10 Law Firms Ranked by Most Office Locations



“ We are advising construction clients to give contractual notices of both delay and changed conditions, to seek additional time and extended general conditions.

-George Pallas, Managing Partner
Cohen Seglias

lien against a business they have good relationships with, filing now might prevent a future uncollectible.

“We had a construction client that was hesitant to pursue liens for millions it was owed despite information that its customer was having financial difficulties,” recalls Brummond. “We pressed the client and it ultimately agreed that we could pursue the liens. Their customer became insolvent, but the client was still able to collect. The key takeaway is if there is any question whether the contractor can

collect from its customer, it’s best to file the lien or pursue the bond claim in a timely manner. They can always be released later if economic circumstances change and reasonable customers will understand the business reasons why such payment remedies are pursued.”

“Under normal circumstances, our construction clients are most concerned about completing their projects safely, profitably and in a timely manner while finding their next set of new projects,” says George Pallas, managing partner and CEO of Cohen Seglias. “Given the current work environment, major concerns for both general contractors and subcontractors include payment for work performed, restarting projects and regaining schedule momentum.”

DELAYS, DELAYS, DELAYS

“While its ultimate effects are not yet fully known, COVID-19 will almost certainly impact project costs and schedules in ways that may or may not be compensable under the governing contracts,” says Beck.

The disruption of the industry’s supply chain has also resulted in

project delays. According to Dodge Data and Analytics, the United States imports around 30% of its building materials from China where many manufacturing facilities have closed or slowed operations in an effort to contain the virus there.

“For projects moving forward, the ability to predict the availability of materials and supplies, especially those reliant on international trade, either directly or as a component, is challenged,” says Steven Charney, chairman of Peckar and Abramson, PC.

“Many clients’ projects have been adversely impacted by delays in the supply chain, labor inefficiencies that have understandably occurred due to illness or other repercussions from the pandemic,” says Hammargren.

“Contractors are attempting to clarify the clause to allow coverage for delays and impacts relating to pandemics and governmental action,” says Pallas, noting that owners are simultaneously seeking to limit their exposure with “no damage for delay” clauses. “We are advising construction clients to give contractual notices of both delay and changed conditions, to seek additional time and extended general conditions.”

Delays appear unavoidable for the foreseeable future as staggered work shifts and physical distancing result in longer completion times. Negotiating a project in phases and using shared payment clauses may be helpful standards in the future. But no matter how well written a contract is, litigation is always a possibility, and all parties involved in a construction project should be aware of claims that might arise from the current pandemic. Meeting these new issues head-on with clear communication is the key to survival for construction companies that must keep their industry relationships viable.

Notice of Claim

David Peden, partner at Porter Hedges LLP, suggests reading all contracts now. “Look at the clauses for delay, changed conditions and claims. A force majeure event may get you more time, but not money. A changed condition clause might get both. If you are being impacted, get your Notices of Claim out, tailored to the exact requirements of each contract. Send it to everyone above you to whom notice must be given. In most contracts, you are required to use the word ‘Claim’ in your notice, so do it if you are sending one,” says Peden.

SAMPLE NOTICE OF CLAIM

DATE:

PROJECT:

We are giving notice of a Claim. The coronavirus is expected to impact our schedule and our costs. We are not at fault. We did not anticipate this event. We cannot control it. We do not know how long it will last. The situation is changing daily. President Trump has just granted Governor Abbott’s request to declare Texas a Disaster Area. At this time, we cannot predict how much additional time we will need, nor can we predict how much our costs will increase. We anticipate disruptions in our labor and in our materials supply lines. We will do what we can to mitigate these impacts, but with symptomatic workers being required to stay home, our onsite labor forces and our suppliers will all be impacted. We will update this Claim as we can.

Thank you for your patience and understanding.

David Peden, Partner
Porter Hedges LLP

RESOLVING DISPUTES

Reading the fine print is essential, says David Loseman, partner at Armstrong Teasdale. “Disputes are often resolved through the language of the relevant contracts themselves, so dispute resolution starts early in the process. We craft construction contracts with a view of how such language would impact and assist our client if a dispute arises,” notes Loseman.

“Owners and general contractors prefer to use a contract form that places almost all of the risk on the downstream party,” says Beck. He advises consulting an attorney to draft, review and negotiate all contract documents rather than waiting until a dispute arises to seek legal assistance. “That is money well spent.”

“Be proactive,” advises Elmore. “The longer an issue remains

unresolved, the larger the financial impact it is likely to have on the project and the project schedule.”

INDUSTRY OUTLOOK

“The effects of the pandemic are evolving almost daily,” says Peter Torricollo, co-chair of commercial and criminal litigation at Gibbons PC. “Our clients seek regular guidance on these various executive orders. They’re focused on the short-term impacts as well as the long-term implications COVID-19 may have on their projects, their businesses and the industry as a whole.”

Eric Grasberger cautions businesses against focusing too much on damages being incurred today. As leader of the construction and design practice at Stael Rives LLP, he warns that if construction business owners

are too consumed with “shuttered projects, slow supply chains, reduced labor availability and impacted site productivity, they may forget that whenever projects reopen, they’ll face a similar back-end crisis comprised of inadequate sub-trade availability, potential refinancing or supplemental financing challenges, and a construction market where everyone wants to catch up simultaneously.” Grasberger advises planning now “for this eventuality.”

“Questions extend to what businesses will survive and those that cannot, in turn disrupting individual project delivery and the industry as a whole,” says Charney. “To what extent the government may intervene, either locally or nationally, by providing relief or imposing new restrictions remains to be seen. The pace of questions and concerns and the need to adjust has been striking. Amidst the difficulties of working remotely and the impact on so many, it has been gratifying to support our clients in sorting through these unprecedented challenges.”

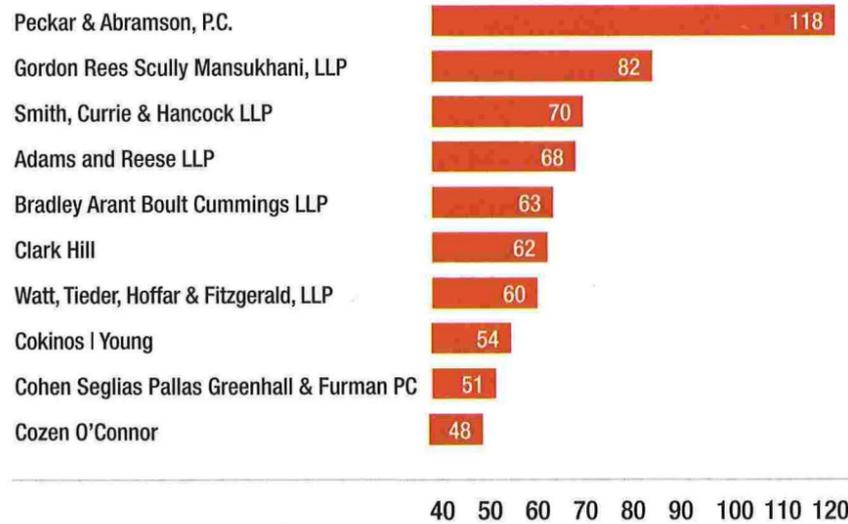
One thing is certain during these trying times, the construction industry, notorious for its unpredictability, is also known for its resilience.

“The construction industry has overcome tremendous challenges in the past and will, in time, overcome this one as well,” says Beck, adding, “It is both ironic and inspiring that a worldwide crisis which has driven us apart physically has also brought the construction industry and the professionals who serve and care deeply about the industry, closer together.”

“Construction attorneys have a duty to educate and assist the industry in addressing this crisis,” says Beck, adding, “We are meeting that challenge on a daily basis.”

Cybele Tamulonis is marketing manager at MagazineXperts. For more information, email surveys@magazinexperts.com.

Top 10 Law Firms Ranked by Number of Construction Attorneys



KEY: ¹Number of states where the firm is licensed to practice law, including Washington, D.C. and Puerto Rico. ²Areas of practice are abbreviated: Contract Documents (CD), Construction Defects (DF), Construction Dispute Resolution (DR), Construction Transactions (CT), Government Contracts (GC), International Construction (IC), Labor and Employment (LE), Mergers and Acquisitions (MA), Public-Private Partnerships (P3), Surety Bonding (SB) ³Percentage of overall firm revenues that its construction practice represents. (-) Not provided.

Rank	Firm	Year Founded	# States Admitted to Practice ¹	# Office Locations	# Firm Attorneys	# Firm Employees	# Construction Attorneys	# Construction Partners in 2019	Construction Practice as % of Total Firm Revenues ³	Areas of Practice ²	
1	Peckar & Abramson, P.C. New York, NY	1978	18	10	118	102	118	63	1,212	86.48	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
2	Smith, Currie & Hancock LLP Atlanta, GA	1965	22	8	70	52	70	38	800	97.41	CD,DF,DR,CT,GC,IC,LE,P3,SB
3	Bradley Arant Boult Cummings LLP Birmingham, AL	1871	34	10	539	409	63	36	1,500	15.88	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
4	Watt, Tieder, Hoffar & Fitzgerald, LLP Chicago, IL	1978	4	5	50	83	60	40	150	100	CD,DF,DR,CT,GC,IC,P3,SB
5	Gordon Rees Scully Mansukhani, LLP San Francisco, CA	1974	51	69	969	1,376	82	29	460	7.6	CD,DF,DR,CT,GC,LE,MA,P3,SB
6	Cohen Seglias Pallas Greenhall & Furman PC Philadelphia, PA	1988	15	9	72	119	51	18	930	76.16	CD,DF,DR,CT,GC,IC,LE,MA,SB
7	Holland & Knight LLP Washington, DC	1968	55	25	1,350	3,000	40	25	150	2.8	CD,DF,DR,CT,GC,IC,LE,P3,SB
8	Fox Rothschild LLP Philadelphia, PA	1907	42	27	956	1,925	47	36	421	4.63	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
9	Andrews Myers, PC Houston, TX	1990	2	2	51	90	31	12	1,250	73.05	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
10	McElroy, Deutsch, Mulvaney & Carpenter, LLP Morristown, NJ	1983	20	13	234	444	37	22	318	17.55	CD,DF,DR,CT,GC,IC,LE,P3,SB
11	K&L Gates LLP Pittsburgh, PA	1946	35	23	1,058	2,216	17	12	339	2.93	CD,DF,DR,CT,GC,IC,LE,MA,P3
12	Foley & Lardner LLP Milwaukee, WI	1842	55	22	1,050	2,300	38	27	170	2.07	CD,DF,DR,CT,GC,LE,MA
13	Carlton Fields Tampa, FL	1901	27	11	326	654	30	17	143	9.83	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
14	Finch, Thornton & Baird, LLP San Diego, CA	1987	8	3	31	59	31	13	1,317	98.98	CD,DF,DR,CT,GC,LE,P3,SB
15	Husch Blackwell LLP Kansas City, MO	1916	55	20	622	1,500	37	27	100	4.21	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
16	Clark Hill Detroit, MI	1890	38	23	665	1,312	62	21	686	5.11	CD,DF,DR,CT,GC,LE,MA,P3,SB
17	Baker, Donelson, Bearman, Caldwell & Berkowitz, PC Memphis, TN	1888	38	21	669	627	33	16	693	4.21	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
18	Zetlin & De Chiara LLP New York, NY	1992	6	3	26	55	26	12	648	100	CD,DF,DR,CT,GC,IC,P3,SB
19	Cotney Construction Law Tampa, FL	2012	19	14	39	65	35	16	876	80	CD,DF,DR,CT,GC,LE,MA,P3,SB
20	Holland & Hart LLP Denver, CO	1947	8	13	450	900	23	13	50	6.67	CD,DF,CT,GC,LE,MA,P3
21	Fabyanske, Westra, Hart & Thomson, PA Minneapolis, MN	1981	10	1	39	53	18	11	500	64.86	CD,DF,DR,CT,GC,IC,MA,P3,SB
22	Perkins Coie LLP Seattle, WA	1912	41	17	1,185	1,256	20	12	427	1.46	CD,DF,DR,CT,GC,IC,LE,MA,P3
23	Ahlers Cressman & Sleight PLLC Seattle, WA	2007	5	1	16	36	16	5	616	99.79	CD,DF,DR,CT,GC,LE,P3,SB
24	Hahn Loeser & Parks LLP Cleveland, OH	1920	14	6	120	236	26	14	800	15.87	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
25	Adams and Reese LLP New Orleans, LA	1951	28	17	257	517	68	47	350	6.62	CD,DF,DR,CT,GC,LE,MA,P3,SB

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THE TOP 50 CONSTRUCTION LAW FIRMS

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26	Stoel Rives LLP Portland, OR	1907	33	10	378	743	14	10	211	4.75	CD,DF,DR,CT,GC,LE,MA,P3,SB
27	SMTD Law LLP Irvine, CA	2014	5	4	17	25	17	7	162	94.34	CD,DF,DR,CT,GC,IC,LE,P3,SB
28	Asmar, Schor & McKenna, PLLC Washington, DC	2010	6	1	15	21	15	7	170	100	CD,DF,DR,CT,GC,IC
29	Carney Badley Spellman, P.S. Seattle, WA	1972	17	1	48	92	15	9	450	28.58	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
30	Smith, Gambrell & Russell, LLP Atlanta, GA	1893	21	7	230	432	14	12	18	6.22	CD,DF,DR,CT,GC,IC,P3,SB
31	Allensworth & Porter Austin, TX	1995	2	1	15	26	15	7	221	99.57	CD,DF,DR,CT,GC,IC,P3,SB
32	Eversheds Sutherland (US) LLP United States	1924	34	8	403	769	10	5	56	2.33	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
33	Larkin Hoffman Minneapolis, MN	1958	13	1	74	154	14	11	500	(-)	CD,DF,DR,CT,GC,LE,MA,P3,SB
34	Riess LeMieux, LLC New Orleans, LA	2018	3	1	13	29	11	6	253	100	CD,DF,DR,CT,GC,LE,MA,P3,SB
35	Robinson & Cole LLP Hartford, CT	1845	21	11	218	419	13	6	262	5.36	CD,DF,DR,CT,GC,LE,MA,P3,SB
36	Lane Powell PC Seattle, WA	1875	3	3	171	394	14	6	355	5.92	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
37	Offt Kurman, P.A. Fulton, MD	1987	12	13	230	500	23	18	125	5.5	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
38	Hudson Parrott Walker LLC Atlanta, GA	2013	6	1	14	25	14	10	300	91.38	CD,DF,DR,CT,GC,LE,P3,SB
39	Gibbons P.C. Newark, NJ	1926	14	8	200	320	15	12	76	5.6	CD,DF,DR,CT,GC,IC,LE,P3,SB
40	Smith Pachter McWhorter PLC Tysons Corner, VA	1986	8	1	35	42	17	7	55	34.42	CD,DF,DR,CT,GC,IC,P3,SB
41	Davis Wright Tremaine LLP Seattle, WA	1944	24	8	564	1,232	5	15	504	1.43	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
42	Slates Harwell LLP Dallas, TX	2013	4	1	11	17	11	7	189	98.1	CD,DF,DR,CT,GC,IC,P3,SB
43	Hendrick, Phillips, Salzman & Siegel, P.C. Atlanta, GA	1981	2	1	8	13	10	3	366	100	CD,DF,DR,CT,GC,LE,MA,P3
44	Nexsen Pruet Columbia, NC	1945	3	8	186	383	13	6	500	5.28	CD,DF,DR,CT,GC,LE,MA,P3,SB
45	Babcock Scott & Babcock Salt Lake City, UT	1984	5	1	10	13	10	7	250	100	CD,DF,DR,CT,GC,IC,SB
46	Freeman Mathis & Gary, LLP Atlanta, GA	1997	24	19	199	342	46	29	250	4.26	CD,DF,DR,CT,GC,IC,LE,MA,P3,SB
47	Shields Mott LLP New Orleans, LA	1995	8	1	10	7	9	6	151	95.39	CD,DF,DR,CT,GC,LE,P3,SB
48	Hesse Martone Saint Louis, MO	1995	9	3	20	35	5	3	200	46.51	DF,DR,LE,MA
49	Elmore Goldsmith Greenville, SC	2011	4	1	6	6	6	5	157	100	CD,DF,DR,GC,P3,SB
50	Chamberlain Hrdlicka Houston, TX	1965	14	4	138	288	6	4	100	4.58	DF,DR,CT,GC,IC,LE,MA