

# Miller | Schirger LLC

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## Stephen R. Miller

Steve has provided his clients with the highest quality legal services for over twenty-five years. A number of his clients have been with him for that length of time. One client summed it up this way: "In my opinion, Steve's expertise in the industry is second to none. He is structured and disciplined in and out of the court room." Another client states, "Steve is very knowledgeable of the construction industry and the problems that we contractors face. He has been able to bring resolution without having to go to trial, but if we have to try a matter, I'm glad I have Steve on my side."

Steve focuses much of his practice on the construction industry but he is first and foremost a trial lawyer and, as such, he represents individuals and businesses in state and federal courts and before arbitration panels nationwide in disputes involving financial institutions, general business, intellectual property, labor, employment, real estate, legal and accountancy malpractice, products liability, personal injury, trusts and estates, with a particular concentration in construction law.

The reported cases in which Steve has served as counsel are impressive for their breadth and for the important legal ground broken in several of them. He has been involved in numerous cases throughout the country, including complex and precedent-setting cases. By the age of 32, he had obtained his first multi-million dollar verdict. In 1993, he served as trial counsel in a one-month trial in San Francisco, California, that resulted in a \$116.5 million verdict that was, at the time, the largest verdict of its kind in the country. For a more detailed description of cases in which Steve has been involved, please refer to the Representative Cases section of this website.

Steve is rated an AV® lawyer by Martindale-Hubbell. His legal skill has been acknowledged on a yearly basis by his peers as Best of the Bar by the Kansas City Business Journal since 2005, the year following the inception of the award, and as a SuperLawyer by SuperLawyer Magazine since its inception.

In August 2009, Steve was appointed by Governor Jay Nixon to the Missouri Highways and Transportation Commission. The six-member Commission has authority over all state transportation programs and facilities, including bridges, highways, airports, railroads, mass transit, ports, and waterways.

## AREAS OF PRACTICE

- Banking Litigation
- Commercial Litigation
- Construction Law
- Construction Litigation
- Employment Law & Litigation
- Fiduciary Litigation

- Insurance Litigation
- Intellectual Property Litigation
- Personal Injury & Wrongful Death Litigation
- Products Liability Litigation
- Real Estate Litigation
- Antitrust, Unfair Competition & Deceptive Trade Practices Litigation
- Whistleblower Litigation
- Alternate Dispute Resolution
- Appellate Practice

## **BAR ADMISSIONS**

- Kansas
- Missouri
- U.S. District Court Western District of Missouri
- U.S. District Court District of Kansas
- U.S. District Court District of Arizona
- U.S. District Court District of Colorado
- U.S. District Court Western District of Wisconsin
- U.S. District Court Northern District of Illinois
- U.S. Court of Appeals 3rd Circuit
- U.S. Court of Appeals 5th Circuit
- U.S. Court of Appeals 8th Circuit
- U.S. Court of Appeals 10th Circuit
- U.S. Court of Federal Claims
- U.S. Supreme Court

## **EDUCATION**

- **Notre Dame Law School**
  - Juris Doctor – 1983
- **University of Notre Dame**
  - Master of Arts – 1989
- **University of Notre Dame**
  - Bachelor of Arts – 1980

## **ARTICLES, PAPERS & PRESENTATIONS**

- American Bar Association, Forum on the Construction Industry
- Construction Superconference, San Francisco, California
- Center for International Legal Studies, Salzburg, Austria
- Kansas City Metropolitan Bar Association
- Lorman Seminars

## **HONORS & AWARDS**

- Best of the Bar — Kansas City Business Journal
- Martindale Hubbell — AV (highest rating)
- SuperLawyers — SuperLawyer Magazine

## **PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS**

- American Bar Association
  - Forum on the Construction Industry
  - Section on Public Contract Law
  - Section on Dispute Resolution
  - Section on Tort and Insurance Practice
  - Section on Litigation
- Missouri Bar Association
  - Construction Law Committee
- Kansas City Metropolitan Bar Association
  - Construction Law Committee
  - Managing Partner Committee
- Kansas Bar Association
- Johnson County Bar Association
- American Bar Foundation

## **CIVIC & CHARITABLE ACTIVITIES**

2009 – 2016: Steve was appointed by Governor Jay Nixon to the Missouri Highways and Transportation Commission. The six-member Commission has authority over all state transportation programs and facilities, including bridges, highways, airports, railroads, mass transit, ports, and waterways.

Steve helped found Turning Point, a center to assist patients and their families suffering from chronic illnesses, such as cancer. Steve served served as Chairman of the founding Board.

Steve serves on the Cancer Funding Partners Council to assist the University of Kansas Cancer Center in its quest for National Cancer Institute designation.

Steve has previously served on:

Don Bosco Centers, Vice President and Board Member

University of Notre Dame Club in Kansas City, President and Board Member

Visitation Parish, Parish Council Member

## REPRESENTATIVE CASES

### Banking Litigation

Defended **health care company** and individual guarantor in St. Louis County state court action by bank to collect on multi-million dollar deficiency, interest, and attorney's fees against corporation and against individual on the basis of personal guarantees. Negotiated successful work-out with bank, avoiding personal bankruptcy of client, resulting in significant write-down by bank, and renegotiation of loan at acceptable debt level and terms. *Enterprise Bank v. Lasik-1, et al.*

Defended construction contractor and **company owners** in Kansas state court action to foreclose and enforce personal guarantees. Reached settlement in case resulting in orderly liquidation of company assets and release of personal guarantors. *Premier Bank v. D.F. Freeman Contracting.*

### Business Litigation

Defended **national steel erection company** from multiple claims by steel fabricator in excess of \$2.5 million. Fabricator claimed oral modifications to the contract and fraud. Defeated all fraud allegations and over 90% of contractual based claims. *Alamo Iron Works v. Schuff Steel*

Represented **owner of development rights** to waste-to-energy facility in \$11.4 million claim in California federal court against developer. In the middle of a four-week jury trial, a mediated settlement was brokered, resulting in confidential settlement and payment to client. *Herzog Contracting Corp. v. North County Resource Recovery Association*

Represented **business owner** in action brought in Kansas state court by business partners regarding contribution and indemnity obligations; counterclaimed for contribution; defeated claim in excess of \$250,000 and obtained judgment on counterclaim in the amount of \$95,078. Judgment was affirmed on appeal and full amount collected. *Ives, et al v. McGannon*

Represented former spouse in a contempt action in state court for violation of judgment with respect to purchased stock, obligations to maintain life insurance, and certain retirement plan funds. Following mediation, client reached a satisfactory settlement of her claims. *Lilley v. Westhead*

Represented a **vehicle leasing business** and majority owner in an action in Kansas state court for injunctive relief and money damages against former manager and part-owner for violation of covenant not to compete and for money damages for fraud, breach of fiduciary duty and other financial improprieties. Injunctive relief was tried to the court; and a permanent injunction granted. Also obtained contempt of court order against defendant. *Transportation Corporation of America, et al. v. Donald C. Thoms, et al*

### Class Action

Represented subset of black school children and parents in federal court class action seeking voucher to attend private schools as part of a broad desegregation action. Featured in magazines and papers across the country, including the New York Times, the Wall Street Journal, and Newsweek. Appeared on NBC's Today Show and various national and local radio programs. *Rivarde, et al. v. Kansas City, Missouri School District, et al.*

### Construction Litigation (Nature of the Dispute)

#### Changes in Design or Scope

Represented an architectural metal company in arbitration to recover monies for additional work caused by the redesign of decorative doors and door systems and unreasonable inspection related to work it performed. Following a three-day arbitration, the client obtained an award in excess of the outstanding contract amounts due, received its arbitration costs, and its attorneys' fees. *A. Zahner Company v. Ronald Sexton*

Represented concrete subcontractor against general contractor in Florida state court to recover additional costs as part of the construction of retirement condominiums in West Palm Beach, Florida. Following a two-week jury trial, obtained verdict in favor of subcontractor. *Concrete Placement, Inc. v. Stolte, Inc.*

Represented general contractor joint venture in \$1.2 million claim against apartment complex developer in Oklahoma state court for additional costs incurred as a result of design changes; defended against owner's claims of improper workmanship. Confidential settlement prior to trial. *DiCarlo/Armstrong vs. Renaissance Development Corp.*

Represented general contractor in Board of Contract Appeals claim in the amount of \$1.1 million for additional costs incurred for the construction of flood control improvements at the Department of Energy's facility in Kansas City, Missouri, as a result of certain design changes and differing site conditions. Compromised settlement with the government prior to trial. *DiCarlo v. U. S. Army Corps of Engineers*

Represented general contractor in multi-million dollar arbitration claim against Indian tribe for additional costs as a result of extra work performed in the construction of an Indian gaming casino outside Yosemite National Park in California. Also defended resulting claims by unpaid subcontractors. Reached confidential settlement prior to trial. *Walton Const. Co. v. Chukchansi Gold Resort Casino*

### **Defective Work**

Represented local architectural metal company in state court action to recover damages caused by defective manufacture of steel components for exterior steel cladding on museum in San Francisco, California. Matter was settled through mediation, resulting in the client recovering damages. *A. Zahner Company v. A-Z Manufacturing Co.*

Represented general contractor in Kansas state court in disputes concerning quality of subcontractor work on municipal aquatic center for the City of Falls City, Nebraska. Following a trial to a 12-person jury, obtained judgment in favor of the general contractor on general contractor's affirmative claims and defeated all counterclaims by masonry subcontractor. The trial court subsequently entered judgment awarding attorney fees to the client. *Carrothers v. Dunninghoo*

Defended general contractor from claim by concrete subcontractor in federal court regarding the construction of concrete pylons for the suspended roof on the expansion of the Bartle Hall Convention Center in Kansas City, Missouri; prosecuted counterclaim for delays and defective work by concrete subcontractor. Obtained judgment in favor of general contractor in the amount of approximately \$380,000; successfully defended judgment on appeal before the Eighth Circuit. *Chicago Forming v. Walton Construction Company*

Represented general contractor in arbitration action against landscaping subcontractor for breach of contract and for failure to replace and maintain plantings. Following multi-day arbitration, obtained award in favor of client for the full amount of prayer, plus interest and attorney's fees. *Edward Kraemer & Sons, Inc. v. SaBell's Landscaping*

### **Delay, Disruption, Interference, and Loss of Productivity**

Represented road contractor in Kansas state court action against the City of Shawnee, Kansas for damages incurred as a result of misrepresentations in the plans and specifications concerning the status of utilities on the project and the resultant delay and interference to the contractor's work. Shortly before trial to the jury, the City agreed to a settlement in the amount of \$820,000. *D. F. Freeman Construction Company v. City of Shawnee, Kansas*

Represented highway and bridge contractor in state court claim against Kansas Department of Transportation for delays and interference to construction of road improvements. Following a trial to a jury, obtained a verdict in favor of client. *Edward Kraemer & Sons, Inc. v. Kansas Department of Transportation*

Represented Wisconsin highway and bridge contractor in a \$2.6 million arbitration claim against state highway department for additional work and delays associated with the construction of a frontage road, bridges, and roadway for I-25 Highway near Longmont, Colorado. Settlement reached during arbitration hearing. *Edward Kraemer & Sons, Inc. v. Colorado Department of Transportation*

Represented Wisconsin road and bridge builder in an administrative appeal action against state highway department for interference caused by the construction of the Cardinal Stadium in St. Louis, Missouri and for differing site condition. After a lengthy administrative process, achieved \$3.9 million settlement. *Edward Kraemer & Sons, Inc. – Missouri Department of Transportation*

Represented highway and bridge contractor in \$1 million claim in state court against cities for delays to major road improvements and bridge construction. Obtained jury verdict in the amount of \$726,860. Successfully defended judgment on appeal to the Kansas Court of Appeals and collected full amount of judgment, plus interest. *Edward Kraemer & Sons, Inc. v. The Cities of Overland Park and Merriam*

Represented dredging contractor in \$500,000 arbitration claim against municipality for additional costs incurred as a result of city's suspension of work on project. Obtained arbitration award in the amount of \$383,824.75. Obtained payment in full of arbitration award, plus interest. *L. W. Matteson Construction Co. v. City of East Peoria, Illinois*

Represented steel erector in arbitration concerning a claim for delay, disruption, and loss of productivity in the retrofit of a coal-fired electrical generation plant caused by out-of-sequence steel deliveries, resequencing of work, and untimely changes. Mediation resulted in the issuance of a Change Order in the amount of \$3,400,000. *Lico Steel v. Thomas Hill Energy Center*

Represented road contractor in state court action against City of St. Joseph, Missouri for additional costs incurred as a result of the City's failure to relocate utilities prior to construction. Following three days of trial to a jury, case was settled mid-trial for \$485,000. *Loch Sand and Construction Company v. City of St. Joseph, Mo*

Represented road contractor in state court action against the City of Kansas City for claim against City for costs incurred as a result of City's failure to relocate utilities prior to contractor's commencement of work and the resulting interference to the contractor's work. Settled prior to trial for \$1.6 million. *Loch Sand and Construction Company v. City of Blue Springs, Mo*

Represented road contractor in state court action against the Department of Transportation for damages caused as a result of the failure to remove utilities and the resultant delay and interference to the contractor's work. Shortly before trial to the jury, the defendant Highway Department agreed to a settlement in the amount of \$829,000. *Loch Sand and Construction Co. v. Missouri Highway Transportation Commission*

Defended general contractor joint venture against \$1.6 million arbitration claim by university for alleged delays to the construction of a fine arts facility and performance hall; asserted

counterclaim in excess of \$1 million. Defeated university's claim and obtained approximately \$1 million award, plus interest that was paid in full. *Truman State University v. Walton/Sparks Joint Venture*

### **Design Defect/Defective Specification**

Represented architectural sheet metal company in mediation regarding structure in Tacoma, Washington in efforts to recover contract balance withheld for alleged construction defects that were, in fact, design defects where the structure had been improperly designed with negative pressure, which drew moisture into the building. Claim was successfully settled through mediation and client received payment. *A. Zahner Company v. Museum of Glass*

Represented Wisconsin highway and bridge contractor in an administrative appeal of a claim against state highway department for additional cost when state reneged on commitment to allow the use of fly ash to stabilize the soil. After two-year administrative process, a settlement was achieved in the amount of \$4.3 million. *Edward Kraemer & Sons, Inc. v. Colorado Department of Transportation*

### **Differing Site Condition**

Represented subcontractor responsible for installing underground concrete piles for the construction of an underground storage facility in arbitration; prosecuted claim for additional costs for differing site conditions; general contractor claimed piles were improperly installed. Settled prior to arbitration for full amount sought by subcontractor. *Berkel & Company v. Preload*

Represented general contractor in federal court and court of appeals in \$4.6 million claim against the City of Dallas, Texas regarding differing site conditions and design changes encountered in the construction of a waste water treatment facility. Following a three-week trial, the jury awarded general contractor the amount of its prayer, interest and attorney's fees; successfully defended judgment on appeal to the Fifth Circuit Court of Appeals. *Carrothers Construction Co. v. City of Dallas*

Represented Missouri earthwork contractor in a state court claim against the Missouri Department of Transportation for breach of warranty ex contractu as a result of misrepresentations in the plans and specifications concerning the quantity and type of subsurface material that the contractor would anticipate. Following a week and a half trial, the jury returned a verdict in favor of the contractor for the full amount sought, resulting in a \$3.8 million judgment. *Damon Pursell v. Missouri Department of Transportation*

Represented utility pipe contractor in arbitration claim against city for differing site conditions in the form of variable soils encountered during the placement of sewer pipeline. Following a one-week arbitration hearing, obtained award in the full amount of the prayer; obtained payment in full, plus interest. *Hoes Unlimited v. City of Trimble, Missouri*



Represented bridge contractor in \$2 million claim against highway department for additional costs incurred when contractor encountered unknown debris and other materials in the construction of footings for a bridge across the Missouri River near St. Louis, Missouri. Obtained jury verdict in the amount of \$2 million. *Massman v. Missouri Highway and Transportation Commission*

Represented general contractor in \$1.2 million arbitration claim against city as a result of dredging contractor encountering unanticipated rock in the dredging of Lake Nasworthy, Texas. Settled prior to arbitration hearing. *L. W. Matteson Construction Co. v. City of San Angelo, Texas*

Represented general contractor before Board of Contract Appeals in claim in the amount of \$1.1 million for additional costs incurred for the construction of flood control improvements at the Department of Energy's facility in Kansas City, Missouri, as a result of certain design changes and differing site conditions. Compromised settlement with the government prior to trial. *DiCarlo v. U. S. Army Corps of Engineers*

### Insurance and Surety Issues

Represented general contractor in bad faith claim in California federal court against surety as a result of an indemnity action brought by surety and surety's refusal to write further bonds, in violation of oral agreement. Further claimed that surety prevented contractor from obtaining a bond from other sureties by giving general contractor poor recommendations, thereby precluding general contractor from obtaining public bonds, resulting in lost profits. Obtained **\$116 million verdict**; \$16 million compensatory damages; \$100 million in punitive damages; confidential settlement reached on appeal. *St. Paul Fire & Marine vs. Arntz*

### Labor

Defended general contractor in arbitration concerning a grievance filed by an Ironworkers local union, alleging violations of a collective bargaining agreement. The general contractor claimed that a National Agreement controlled over the local agreement and that it had complied with such an agreement. Following several days of arbitration, an award was entered in favor of the contractor and the grievance was denied. *Edward Kraemer & Sons, Inc. and Ironworkers Local No. 10*

Defended claim against painting contractor by union pension fund for withdrawal liability and successor liability. Negotiated agreement to avoid liability and penalties. *Cass County Coatings/Pension Fund*

### **MBE/WBE/DBE**

Represented woman-owned business in federal court in constitutional challenge to Kansas City, Missouri Affirmative Action Program. Constitutional challenge ultimately dismissed. Maintained client's participation in Affirmative Action Program. *Electrical Corporation of America v. City of Kansas City, Missouri, et al.*

### **Mechanic's Lien**

Represented an electrical contractor in action in state court to recover monies following owner's termination of general contractor on \$100 million mixed-use development. Following owner's declaration of bankruptcy, client's mechanic's lien claim was tried in bankruptcy court. Following the bench trial, the client's lien claims were substantiated and secured in full. The matter was appealed and subsequently settled. *Mark One Electric Company v. Trilogy Development, Inc., et al.*

Represented an architectural metal company in arbitration to recover monies for additional work caused by the redesign of decorative doors and door systems and unreasonable inspection related to work it performed. Following a three-day arbitration, the client obtained an award in excess of the outstanding contract amounts due, received its arbitration costs, and its attorneys' fees. Successfully defeated all counterclaims asserted against the client. *A. Zahner Company v. Ronald Sexton*

### **Misrepresentation/Implied Warranty**

Represented bridge contractor in state court on claim for breach of warranty *ex contractu* against state department of transportation unknown debris and other materials in construction of footings for a bridge across the Missouri River. Following a 7-day jury trial, obtained a jury verdict in the amount of approximately \$850,000. Following appeal, settlement was reached and payment made. *Massman Construction Co. v. Missouri Highway and Transportation Commission*

Represented bridge builder in action against highway department for additional cost incurred when contractor encountered underground debris and other unknown conditions during construction of bridge over Missouri River. Following two-week jury trial in state court, obtained favorable verdict of approximately \$1 million. Obtained payment in full of judgment amount, plus interest. *Newberg/Perini v. Highway and Transportation Commission*

Represented general contractor in Texas federal court action against City for breach of implied warranty as a result of misrepresentations concerning the condition of subsurface materials to be used for the construction of an embankment for flood improvements. Following a three-week jury trial, obtained a verdict in the amount of \$3,051,318. *Mine Service, Inc. v. City of Dallas*

Represented general contractor in \$4.9 million claim in state court against utility for breach of contract and implied warranties relating to the installation of a 36 mile long water pipeline from Stockton Lake to the City of Springfield, Missouri. Following a four-week trial, the jury returned a

verdict in the amount of \$4,931,056. *Journagan Construction Co. v. City Utilities of Springfield, Missouri*

## Payment Disputes

Represented architectural metal subcontractor in arbitration concerning dispute with joint venture partner over performance of work on the Stata Computer Center at the Massachusetts Institute of Technology. Obtained favorable ruling discharging the company from any further obligations to joint venture partner and awarding damages. *A. Zahner Company v. Karas*

Defended local architectural metal company against claims of defective workmanship regarding fabrication, installation and construction of roof faces, cable-supported roofing, and related improvements to performing arts center. Through a negotiated settlement, the client received its principal amount in full. *A. Zahner Company v. Kaufmann Performing Arts Center*

Represented piling specialty contractor in prosecuting claims against an oil refinery, while also defending against a multi-million dollar counterclaim for alleged property damage. Achieved successful settlement and payment to client following mediation. *Berkel Contractors v. Chevron*

Represented an electrical contractor in action in state court to recover monies following owner's termination of general contractor on \$100 million mixed-use development. Following owner's declaration of bankruptcy, client's mechanic's lien claim was tried in bankruptcy court. Following the bench trial, the client's lien claims were substantiated and secured in full. The matter was appealed and subsequently settled. *Mark One Electric Company v. Trilogy Development, Inc., et al.*

Represent dredging contractor in action in federal court in New York against general contractor on hazardous waste cleanup for Tennessee Valley Authority to recover monies where general contractor claimed the contract was based on production, not time and material. Prior to trial, client received \$2.3 million payment. *L. W. Matteson Construction Co. v. Severson Environmental, et al.*

Represented a specialty subcontractor in state court action on a multi-million dollar municipal street and sewer project to recover contract balances and defend against liquidated damage claim, where payment had been withheld by the general contractor and substantial liquidated damages were threatened. Case settled just prior to trial, with the client receiving its principal claim, plus interest and attorney fees. *Sosaya & Sons Construction v. Hill Brothers Construction.*

### Construction Litigation (Type of Project)

#### **Apartment Complex/Multi-Family/University and Military Housing**

Represented general contractor joint venture in \$1.2 million claim against apartment complex developer in Oklahoma state court for additional costs incurred as a result of design changes; defended against owner's claims of improper workmanship. Confidential settlement prior to trial. *DiCarlo/Armstrong vs. Renaissance Development Corp.*

Defended general contractor joint venture against \$1.6 million arbitration claim by university for alleged delays to the construction of a fine arts facility and performance hall; asserted counterclaim in excess of \$1 million. Defeated university's claim and obtained approximately \$1 million award, plus interest that was paid in full. *Truman State University v. Walton/Sparks Joint Venture*

Represented an architectural metal company in arbitration to recover monies for additional work caused by the redesign of decorative doors and door systems and unreasonable inspection related to work it performed. Following a three-day arbitration, the client obtained an award in excess of the outstanding contract amounts due, received its arbitration costs, and its attorneys' fees. Successfully defeated all counterclaims asserted against the client. *A. Zahner Company v. Ronald Sexton*

#### **Commercial Buildings**

Represented concrete subcontractor against general contractor in Florida state court to recover additional costs as part of the construction of retirement condominiums in West Palm Beach, Florida. Following a two-week trial, obtained verdict in favor of subcontractor. *Concrete Placement, Inc. v. Stolte, Inc.*

Represented an electrical contractor in action in state court to recover monies following owner's termination of general contractor on \$100 million mixed-use development. Following owner's declaration of bankruptcy, client's mechanic's lien claim was tried in bankruptcy court. Following the bench trial, the client's lien claims were substantiated and secured in full. The matter was appealed and subsequently settled. *Mark One Electric Company v. Trilogy Development, Inc., et al.*

Represented architectural metal subcontractor in arbitration dispute with joint venture partner concerning performance of work on the Stata Computer Center at the Massachusetts Institute of Technology. Obtained favorable ruling. *A. Zahner Company v. Karas*

#### **Dams, Locks, Dredging and Flood Control Projects**

Represented general contractor in Board of Contract Appeals claim in the amount of \$1.1 million for additional costs incurred for the construction of flood control improvements at the Department of Energy's facility in Kansas City, Missouri, as a result of certain design changes and differing

site conditions. Compromised settlement with the government prior to trial. *DiCarlo v. U. S. Army Corps of Engineers*

Represented dredging contractor in \$500,000 arbitration claim against municipality for additional costs incurred as a result of city's suspension of work on project. Obtained arbitration award in the amount of \$383,824.75. Obtained payment in full of arbitration award, plus interest. *L. W. Matteson Construction Co. v. City of East Peoria, Illinois*

Represented general contractor in \$1.2 million arbitration claim against city as a result of dredging contractor encountering unanticipated rock in the dredging of Lake Nasworthy. Settled prior to arbitration hearing. *L. W. Matteson Construction Co. v. City of San Angelo, Texas*

### **Hazardous Waste Cleanup**

Represented dredging contractor in action in federal court in New York against general contractor on hazardous waste cleanup for Tennessee Valley Authority to recover monies where general contractor claimed the contract was based on production, not time and material. Prior to trial, client received \$2.3 million payment. *L. W. Matteson Construction Co. v. Severson Environmental, et al.*

### **Highways, Bridges, Roads, and Streets**

Represented Wisconsin highway and bridge contractor in a \$2.6 million arbitration claim against state highway department for additional work and delays associated with the construction of a frontage road, bridges, and roadway for I-25 Highway near Longmont, Colorado. Settlement reached during arbitration hearing. *Edward Kraemer & Sons, Inc. v. Colorado Department of Transportation*

Represented bridge contractor in \$2 million claim against highway department for additional costs incurred when contractor encountered unknown debris and other materials in the construction of footings for a bridge across the Missouri River near St. Louis, Missouri. Obtained jury verdict in the amount of \$2 million. *Massman v. Missouri Highway and Transportation Commission*

Represented bridge builder in action against highway department for additional cost incurred when contractor encountered underground debris and other unknown conditions during construction of bridge over Missouri River. Following two-week jury trial in state court, obtained favorable verdict of approximately \$1 million. Obtained payment in full of judgment amount, plus interest. *Newberg/Perini v. Highway and Transportation Commission*

Represented Missouri earthwork contractor in a state court claim against the Missouri Department of Transportation for breach of warranty ex contractu as a result of misrepresentations in the plans and specifications concerning the quantity and type of subsurface material that the contractor would anticipate. Following a week and a half trial, the

jury returned a verdict in favor of the contractor for the full amount sought, resulting in a \$3.8 million judgment. *Damon Pursell v. Missouri Department of Transportation*

Represented road contractor in Kansas state court action against the City of Shawnee, Kansas for damages incurred as a result of misrepresentations in the plans and specifications concerning the status of utilities on the project and the resultant delay and interference to the contractor's work. Shortly before trial to the jury, the City agreed to a settlement in the amount of \$820,000. *D. F. Freeman Construction Company v. City of Shawnee, Kansas*

Represented Wisconsin highway and bridge contractor in a \$2.6 million arbitration claim against state highway department for additional work and delays associated with the construction of a frontage road, bridges, and roadway for I-25 Highway near Longmont, Colorado. Settlement reached during arbitration hearing. *Edward Kraemer & Sons, Inc. v. Colorado Department of Transportation*

Represented highway and bridge contractor in state court claim against Kansas Department of Transportation for delays and interference to construction of road improvements. Following a trial to a jury, obtained a verdict in favor of client. *Edward Kraemer & Sons, Inc. v. Kansas Department of Transportation*

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Represented general contractor in arbitration action against landscaping subcontractor for breach of contract and for failure to replace and maintain plantings. Following multi-day arbitration, obtained award in favor of client for the full amount of prayer, plus interest and attorney's fees. *Edward Kraemer & Sons, Inc. v. SaBell's Landscaping*

Represented highway and bridge contractor in \$1 million claim in state court against the cities for delays to major road improvements and bridge construction. Obtained jury verdict in the amount of \$726,860. Successfully defended judgment on appeal to the Kansas Court of Appeals and collected full amount of judgment, plus interest. *Edward Kraemer & Sons, Inc. v. The Cities of Overland Park and Merriam*

Represented Wisconsin road and bridge builder in an administrative appeal action against state highway department for interference caused by the construction of the Cardinal Stadium in St. Louis, Missouri and for differing site condition. After a lengthy administrative process, achieved \$3.9 million settlement. *Edward Kraemer & Sons, Inc. – Missouri Department of Transportation*

Represented road contractor in state court action against City of St. Joseph, Missouri for additional costs incurred as a result of the City's failure to relocate utilities prior to construction.

Following three days of trial to a jury, case was settled mid-trial for \$485,000. *Loch Sand and Construction Company v. City of St. Joseph, Mo*

Represented road contractor in state court action against the City of Kansas City for claim against City for costs incurred as a result of City's failure to relocate utilities prior to contractor's commencement of work and the resulting interference to the contractor's work. Settled prior to trial for \$1.6 million. *Loch Sand and Construction Company v. City of Blue Springs, Mo*

Represented road contractor in state court action against the Department of Transportation for damages caused as a result of the failure to remove utilities and the resultant delay and interference to the contractor's work. Shortly before trial to the jury, the defendant Highway Department agreed to a settlement in the amount of \$829,000. *Loch Sand and Construction Co. v. Missouri Highway Transportation Commission*

Represented a specialty subcontractor in state court action on a multi-million dollar municipal street and sewer project to recover contract balances and defend against liquidated damage claim, where payment had been withheld by the general contractor and substantial liquidated damages were threatened. Case settled just prior to trial, with the client receiving its principal claim, plus interest and attorney fees. *Sosaya & Sons Construction v. Hill Brothers Construction.*

#### **Public Venues (Aquatic Centers, Casinos, Convention Centers, Performance Halls, Museums, and Sports Facilities)**

Represented general contractor in multi-million dollar arbitration claim against Indian tribe for additional costs as a result of extra work performed in the construction of an Indian gaming casino outside Yosemite National Park in California. Also defended resulting claims by unpaid subcontractors. Reached confidential settlement prior to trial. *Walton Const. Co. v. Chukchansi Gold Resort Casino*

Represented local architectural metal company in state court action to recover damages caused by defective manufacture of steel components for exterior steel cladding on museum in San Francisco, California. Matter was settled through mediation, resulting in the client recovering damage. *A. Zahner Company v. A-Z Manufacturing Co.*

Represented local architectural sheet metal company in a construction dispute in state court in Missouri with general contractor regarding fabrication, installation and construction of roof faces, cable-supported roofing, and related improvements to performing arts center. Through a negotiated settlement, the client received its principal amount in full. *A. Zahner Company v. Kaufmann Performing Arts Center*

Represented architectural sheet metal company in mediation regarding structure in Tacoma, Washington in efforts to recover contract balance withheld for alleged construction defects that were, in fact, design defects where the structure had been improperly designed with negative pressure, which drew moisture into the building. Claim was successfully settled through mediation and client received payment. *A. Zahner Company v. Museum of Glass*

Represented general contractor disputes heard in Kansas state court with subcontractor on municipal aquatic center for the City of Falls City, Nebraska. Following a trial to a 12-person jury, obtained judgment in favor of the general contractor on general contractor's affirmative claims and defeated all counterclaims by masonry subcontractor. The trial court subsequently entered judgment awarding attorney fees to the client. *Carrothers v. Dunning*

Defended general contractor from claim by concrete subcontractor in federal court regarding the construction of concrete pylons for the suspended roof on the expansion of the Bartle Hall Convention Center in Kansas City, Missouri; prosecuted counterclaim for delays and defective work by concrete subcontractor. Obtained judgment in favor of general contractor in the amount of approximately \$380,000; successfully defended judgment on appeal before the Eighth Circuit. *Chicago Forming v. Walton Construction Company*

### **Utility, Power Plants, Underground Storage Facilities and Industrial**

Represented piling specialty contractor in prosecuting claims against an oil refinery, while also defending against a multi-million dollar counterclaim for alleged property damage. Achieved successful settlement and payment to client following mediation. *Berkel Contractors v. Chevron*

Represented subcontractor responsible for installing concrete piles for the construction of an underground storage facility in arbitration; prosecuted claim for additional costs for differing site conditions; general contractor claimed piles were improperly installed. Settled prior to arbitration for full amount sought by subcontractor. *Berkel & Company v. Preload*

Represented general contractor in Texas federal court on \$4.6 million claim against the City of Dallas, Texas regarding differing site conditions and design changes encountered in the construction of a waste water treatment facility. Following a three-week trial, the jury awarded general contractor the amount of its prayer, interest and attorney's fees; successfully defended judgment on appeal to the Fifth Circuit Court of Appeals. *Carrothers Construction Co. v. City of Dallas*

Represented utility pipe contractor in arbitration claim against city for differing site conditions in the form of variable soils encountered during the placement of sewer pipeline. Following a one-week arbitration hearing, obtained award in the full amount of the prayer; obtained payment in full, plus interest. *Hoes Unlimited v. City of Trimble, Missouri*

Represented general contractor in \$4.9 million claim in state court against utility for breach of contract and implied warranties relating to the installation of a 36 mile long water pipeline from Stockton Lake to the City of Springfield, Missouri. Following a four-week trial, the jury returned a verdict in the amount of \$4,931,056. *Journagan Construction Co. v. City Utilities of Springfield, Missouri*

Represented steel erector in arbitration concerning a claim for delay, disruption, and loss of productivity in the retrofit of a coal-fired electrical generation plant caused by out-of-sequence



steel deliveries, resequencing of work, and untimely changes. Mediation resulted in the issuance of a Change Order in the amount of \$3,400,000. *Lico Steel v. Thomas Hill Energy Center*

### Employment and Labor Litigation

Represented general contractor in arbitration concerning a grievance filed by an Ironworkers local union, alleging violations of a collective bargaining agreement. The general contractor claimed that a National Agreement controlled over the local agreement and that it had complied with such an agreement. Following several days of arbitration, an award was entered in favor of the contractor and the grievance was denied. *Edward Kraemer & Sons, Inc. and Ironworkers Local No. 10*

Represented manufacturing company in Kansas state court action to enforce its Covenant of Non-Competition against former employee. Following a multi-day trial to the Court, obtained judgment in favor of client and monetary award. *McQueeny-Lock Manufacturing Co., et al. v. Jere Kimmel*

Defended manufacturing company in a state court claim brought by a terminated employee for commissions. Following mediation, the matter was successfully resolved. *McQueeny-Lock Manufacturing v. Williams and Smith*

Represented insurance agency in state court action to enforce its covenant of non-competition against former employee. Following a multi-day trial to the court, obtained judgment in favor of client for permanent injunction against former employee and the new employer of former employee, as well as an award of attorney fees. *R. E. Miller Ins. Agency v. Speiss, et al*

Represented physician in action for declaratory judgment concerning physician's compliance with non-compete terms of employment agreement and the notice that the defendant's medical practice is required to give to patients regarding their right to records and to the physician of their choice. Following trial to the court, obtained judgment in favor of client regarding compliance with non-compete covenant and the right for notice to be given to physician's clients, the right to files, and the location of his new practice. *Michael Stiles v. Hunkeler Eye Center*

Represented a vehicle leasing business and majority owner in an action for injunctive relief and money damages against former manager and part-owner for violation of covenant not to compete and for money damages for fraud, breach of fiduciary duty and other financial improprieties. Injunctive relief was tried to the court; and a permanent injunction granted. Also obtained contempt of court order against defendant. *Transportation Corporation of America, et al. v. Donald C. Thoms, et al.*

Represented ophthalmologist and ophthalmology practice in an action for injunctive relief, breach of contract and tortious interference against publicly traded physician management group. Obtained preliminary injunction. Confidential Settlement subsequently reached. *Wiles et al. v. LCA Vision, Inc.*

### Insurance Litigation

Represented general contractor in bad faith claim in California federal court against surety as a result of an indemnity action brought by surety and surety's refusal to write further bonds, in violation of oral agreement. Further claimed that surety prevented contractor from obtaining a bond from other sureties by giving general contractor poor recommendations, thereby precluding general contractor from obtaining public bonds, resulting in lost profits. Obtained \$116 million verdict; \$16 million compensatory damages; \$100 million in punitive damages; confidential settlement reached on appeal. *St. Paul Fire & Marine vs. Arntz*

### Intellectual Property Litigation

Represented service corporation in Kansas state court action concerning claims of service mark infringement and unfair competition. Achieved settlement that protected clients' service mark and precluded defendant from unfair competition. *Classic Catering Corp. v. Gourmet Gatherings a/k/a Classic Catering*

Defended LLCs and individual members in an action brought by a former member concerning ownership of intellectual property rights to heating and air conditioning technology. Obtained favorable confidential settlement. *Stanley J. Demster et al. v. AirFixture, LLC., et al.*

Represented architectural firm in copyright action in federal court against a former officer and clients for illegal use of copyrighted architectural plans for large retail centers. Confidential settlement reached. *Jantsch Architects, Inc. v. Maefield Development Corps.,*

Represented electrical contractor in state court action in Missouri in trade name and service mark infringement against competitor using similar trade name and service mark. Obtained permanent injunction against competitor. *Schultz Electric v. R. Schultz Electric*

### Professional Malpractice

Represented estate of deceased banker in \$4 million claim against accounting firm for accounting malpractice and against lawyer for legal malpractice as a result of erroneous advice given to trustees of estate in the administration of the estate and in the sale of publicly traded stocks. Confidential settlement reached shortly prior to trial. *Estate of John J. Sullivan v. Ernst & Young, et al.*

### Real Estate Litigation

Represented owner of development rights to waste-to-energy facility in \$11.4 million claim in California federal court against developer regarding development rights. In the middle of a four-week jury trial, a mediated settlement was brokered, resulting in confidential settlement and payment to client. *Herzog Contracting Corp. v. North County Resource Recovery Association*

Represented land owner in a prescriptive easement action against adjoining land owners in Mission Hills, Kansas seeking to have property line redrawn on basis of adverse possession. Following three day trial to the court, obtained a verdict in favor of client that resulted in redrawing of property boundary. Judgment was appealed to the Kansas Court of Appeals where an affirmation of the lower judgment was achieved. *Craig and Mary Whitaker v. Bernard and Karen Huff*

### Unfair Competition/Deceptive Trade Practices

Represented transit service company in antitrust action in District of Columbia federal court against Boston's light rail transit authority and various railroad unions for restraint of trade and anti-competitive activity, an illegal tying arrangement and attempts to monopolize. The case resulted in a confidential settlement. *Bay State Transit Services, LLC v. Amtrak, et al.*

Represented service corporation in Kansas state court action concerning claims of service mark infringement and unfair competition. Achieved settlement that protected clients' service mark and precluded defendant from unfair competition. *Classic Catering Corp. v. Gourmet Gatherings a/k/a Classic Catering*

Represented architectural firm in federal court action against former officer for theft of trade secrets, computer tampering, breach of fiduciary duty, and copyright infringement. Matter is currently proceeding in the United States District Court for the Western District of Kansas. *Jantsch Architects, Inc. v. Scott Slaggie, et al.*

Represented manufacturing company in Kansas state court action to enforce its Covenant of Non-Competition against former employee. Following a multi-day trial to the Court, obtained judgment in favor of client and monetary award. *McQueeny-Lock Manufacturing Co., et al. v. Jere Kimmel*

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Represented ophthalmologist and ophthalmology practice in an action for injunctive relief, breach of contract and tortious interference against publicly traded physician management group. Obtained preliminary injunction. Confidential settlement reached thereafter. *Wiles et al. v. LCA Vision, Inc.*

### **Wills, Trusts & Estate Litigation**

Represented estate of deceased banker in \$4 million claim against accounting firm for accounting malpractice and against lawyer for legal malpractice as a result of erroneous advice given to trustees of estate in the administration of the estate and in the sale of publicly traded stocks. Confidential settlement reached shortly prior to trial. *Estate of John J. Sullivan v. Ernst & Young, et al.*