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PRACTICE FOCUS

Construction & Design
Business & Commercial



JEFFREY A. KENNARD

Shareholder

Jeff Kennard chairs the Firm's Construction & Design practice group and is also a member of our Business & Commercial litigation practice group. He has tried or arbitrated more than 20 cases to verdict or award. His clients include publicly-traded companies, several of America's largest private companies, and small businesses.

Although Jeff advises clients at all phases of a construction project, the principal focus of his practice is dispute resolution. For more than two decades, he has been privileged to advise EPC contractors, general contractors, construction managers, subcontractors, design professionals, and owners concerning disputes arising from a wide variety of construction projects, including: petroleum and biofuel refineries; food processing facilities; military facilities and government housing; earthen dams; sports stadiums; commercial office buildings and high-rise towers; heavy highway, transportation, and civil; distribution facilities; and condominium, apartment, retail, and mixed-use developments.

In addition to trying and arbitrating a wide variety of construction disputes, Jeff has also tried several commercial, professional liability, and premises cases to verdict or award. These matters included: successfully prosecuting a claim in bankruptcy court to assume executory supply contracts worth more than \$500 million, obtaining a complete defense verdict for a publicly-traded mortgage company in a \$50 million breach of contract action, and successfully defending an international hotel franchisor in a premises liability action in which the plaintiff sought more than \$1 million in damages.

Jeff serves as a mediator and arbitrator. He is a member of the American Arbitration Association's National Panel of Construction Arbitrators.

AWARDS & RECOGNITIONS

- Recognized in *The Best Lawyers in America*[®] in the area of Construction Law (2017 to present)
- Fellow, Construction Lawyers Society of America (2019)
- Fellow, American Bar Foundation (2017 to present)
- Selected for inclusion in *Super Lawyers*[®] for Construction Litigation in Kansas and Missouri (2008 to present)
- AV[®] Preeminent[™] Peer Rating, Martindale-Hubbell

EXPERIENCE
SOLUTIONS
RESULTS

EXPERIENCE AND RESULTS

- Served as lead counsel and successfully defended international EPC contractor in arbitration arising from design and construction of Pennsylvania biodiesel facility under cost-plus contract. Owner of facility sought \$18.8 million in damages arising from alleged design defects and alleged “mismanagement” of project. Asserted counterclaim on behalf of client to recover unpaid fees. Following three-week evidentiary hearing, arbitrators awarded client entire amount of counterclaim and awarded owner less than one percent of its claimed damages.
- Served as lead trial counsel and successfully defended pharmacy in wrongful death action in which plaintiffs sought actual damages in excess of \$800,000 and punitive damages. Client admitted liability for negligence but denied liability for punitive damages. Plaintiff’s final pretrial settlement demand was \$1.5 million. After applying statutory damage caps and credit for co-defendant’s settlement, net jury verdict was \$125,000.
- Represented regional grocery retailer and served as lead defense counsel in putative class action brought on behalf of Missouri consumers. Putative class sought more than \$7 million in damages arising from alleged mislabeling of nutritional contents of food supplement. Court granted motion to dismiss action with prejudice prior to commencement of discovery.
- Served as lead counsel for EPC contractor and surety in Miller Act action brought by excavation and earthwork subcontractor seeking additional compensation for work performed on project at military base in Georgia. After completing targeted discovery and defeating claimant’s motion for summary judgment, successfully negotiated nominal settlement.
- Served as lead counsel and successfully defended architect and engineers in arbitration arising from roof renovation of domed sports arena in South Dakota. Design-builder sued clients and sought more than \$1.2 million in damages arising from alleged design errors. Design-builder dismissed all claims and paid clients’ fees after third day of hearing.
- Served as lead counsel and successfully defended design-builder in lawsuit arising from construction of Oklahoma food processing facility. Owner sought \$850,000 in damages for alleged design and construction defects. Client was awarded summary judgment on all claims, plus its attorney’s fees and costs.

EXPERIENCE
SOLUTIONS
RESULTS

EXPERIENCE AND RESULTS (cont.)

- Served as lead counsel and successfully defended EPC contractor in arbitration arising from design and construction of oil-gas hydrocracker at Utah refinery. Mechanical subcontractor sought \$12 million in damages for alleged delays, disruptions, and productivity losses. Initially obtained dismissal of suit, which was filed in Utah federal court, based on venue-selection clause in subcontract notwithstanding Utah statute that invalidated such clauses. Then, pursuant to parties' agreement to resolve dispute via expedited arbitration and two-week evidentiary hearing, subcontractor obtained \$3.6 million award, which was within range of acknowledged liability and less than final settlement offer.
- Served as lead counsel and successfully defended EPC contractor in action brought by mechanical subcontractor in Texas state court seeking damages for disruptions and productivity losses on refinery project in Oklahoma. After completing investigation and case analysis, successfully negotiated nominal settlement at mediation.
- Served as lead counsel and defended lawsuit brought by residential homeowner against multiple parties, including our client, which manufactured windows, alleging more than \$2.2 million in damages due to alleged construction defects and failure of building envelope. After developing evidence that performance of windows exceeded specifications and contractor did not properly install windows in accordance with manufacturer's guidelines, successfully negotiated favorable settlement at mediation.
- Served as lead counsel and represented Canadian manufacturing company in commercial arbitration before the International Centre for Dispute Resolution. Client asserted claims against Global 500 international company for wrongful termination of distributorship agreement. Following seven-day evidentiary hearing, client was awarded all claimed damages, plus reimbursement of all administrative expenses and costs.
- Served as lead counsel and defended engineering firm in multi-defendant personal injury action arising from collapse of dust collector system in industrial facility in St. Louis. Upon completing investigation and early assessment, successfully negotiated settlement of claims against client for nominal amount. Plaintiff later obtained jury verdicts against remaining defendants that collectively exceeded \$2.5 million.
- Served as lead counsel and successfully defended regional grocery store chain in several jury trials throughout greater Kansas City area.

EXPERIENCE
SOLUTIONS
RESULTS

EDUCATION

JD, University of Kansas School of Law, 1994

University of Kansas Law Review, 1993-94

BS, Business Administration, with highest distinction, University of Kansas, 1991

ADMISSIONS

- United States Supreme Court
- United States Court of Appeals for the Eighth and Tenth Circuits
- United States District Courts for the District of Kansas, Western District of Missouri, District of Nebraska, Northern District of Oklahoma, and Western District of Oklahoma
- Supreme Courts of Kansas, Missouri, and Oklahoma

PUBLICATIONS & PRESENTATIONS

- Lead Author, *Introduction to Construction Contracts*, Kansas Construction Law Handbook (2d ed.)
- Lead Author, *Construction Law Update, Chapter 10—Midwest Region* (Aspen, 2012-13)
- Presenter, *Construction Law – Improving the Project Outcome with Accurate and Effective Construction Contracting*, HalfMoon Education, Inc. (2017)
- Presenter, *Law of Engineering Malpractice*, Kansas Engineering Law and Ethics, HalfMoon Education, Inc. (2014)
- Presenter, *Navigating the Social Media Maze: How to Use Facebook, MySpace and Twitter as Litigation Tools*, Kansas Bar Association (2011)
- Presenter, *Electronic Discovery and the New Federal Rules*, UMKC School of Law (2007)