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**D**avid Smiley is an experienced construction litigation attorney who works with company owners, presidents, CEOs and COOs of general contractors, large-scale specialty subcontractors, engineering design firms, and other construction industry businesses. He is highly knowledgeable and skilled in handling construction defect, property damage, personal injury, and payment and collections litigation, as well as construction contract review, negotiations, and insurance coverage matters. David practices in California and throughout southwest United States.

#### **CONSTRUCTION DEFECT LITIGATION**

While mediation or litigation may be viable options, David first applies his proven negotiating skills, command of alternative dispute resolution approaches, and calming demeanor to every engagement. Through his ability to collaborate well with other attorneys and insurance representatives, he is ideally suited to lead and manage the multi-party legal teams necessary to succeed in complex state and federal construction litigation. From oversight of case investigations and insurance funding assessments to legal strategy development and implementation, David consistently achieves outstanding results under the most demanding circumstances.

#### **PROPERTY DAMAGE LITIGATION**

Resolving property damage disputes on state and federal construction projects — especially those of the catastrophic variety — present unique challenges to general contractors and specialty subcontractors. Drawing upon over seventeen years of experience, David provides wisdom and guidance in handling property damage litigation matters. Leading thorough and deliberate investigations, evaluating and determining responsibility, and working collaboratively with insurers are hallmarks of David's practice. It is a formula that consistently produces win-win outcomes for our clients.

#### **PRACTICES**

- Construction Law
  - Claims & Disputes
  - Local Agency, Municipal & State Contracts
  - Federal Procurement & Claims
  - Project Counsel
  - Prime Contracts & Subcontracts
  - Real Estate
  - Collections
  - Insurance Defense
- Business & Commercial Litigation
- Liability Defense

#### **ADMISSIONS**

- California: State Courts
- Arizona: State Courts
- Colorado: State Courts (*Inactive*)
- Nebraska: State Courts (*Inactive*)
- Nevada: State Courts
- U.S. District Courts of California: Central, Eastern, Northern, Southern
- U.S. District Court of Colorado (*Inactive*)
- U.S. District Court of Nevada
- U.S. District Court of Arizona
- U.S. Court of Appeals, Ninth Circuit

Finch, Thornton & Baird, LLP  
4747 Executive Drive, Suite 700  
San Diego, CA 92121

## PERSONAL INJURY LITIGATION

Given his long history and understanding of insurance company policies and practices, David is adept and well prepared for the unique challenges of third-party personal injury matters. He has represented general contractors and subcontractors on claims brought both during and after the completion of construction projects with excellent results. That insurers such as Zurich, AIG, and others have placed David on their approved panels are testament to his successful defense of their insureds.

## EXTRA COST, DELAY, AND PAYMENT AND COLLECTION CLAIMS

The legal bureaucracy overlaying payment and collection matters on federal construction projects is complex and ever changing. With little room for negotiation, many Finch, Thornton & Baird clients look to David to help them navigate these turbulent issues. He responds by aggressively and methodically pursuing claims for extra costs or extra work, scheduled disruptions, delay, interruption, and more. Calling upon his wealth of experience and successful prosecution of mechanic's liens, stop payment notices, Miller Act, and other collection claims, David knows how to get clients paid!

## CONSTRUCTION CONTRACTS REVIEW AND NEGOTIATION

It stands to reason that the attorney who so capably litigates claims on behalf of clients is equally well qualified to impart his expertise regarding litigation avoidance and risk management. With an eye toward identifying the pitfalls of indemnity, insurance, terms of payment, termination, project schedule, and notice provisions, David's review and negotiation of construction contracts and agreements is a sound investment in risk management.

## COURSE-OF-PERFORMANCE COUNSEL

Could partnering with a legal authority who can effectively navigate the statutory framework that surrounds most construction projects enhance your profitability? Many experienced general contractors and subcontractors believe it can — with good reason. The litigation and non-litigation strategies that David brings to each engagement are well balanced and serve to expedite a wide range of claims and disputes. From bid protests and bid substitution requests to contract terminations, David's active involvement in long-troubled construction projects ensures our clients achieve most favorable results at lower cost.

## EXPERIENCE

- Defense and litigation of construction defect, property damage, personal injury, and products liability disputes
- Insurance coverage, bad faith, and extra-contractual liability
- Course-of-performance counsel
- Public and private works disputes
- Business disputes
- Delay, inefficiency, and extra work claims
- Foreclosure on mechanic's liens and enforcement of stop payment notices
- State and local bid protests
- Subcontractor listing and substitution issues
- Contract review and negotiation

## EDUCATION

- Creighton University, J.D., Law Review
- University of Colorado at Boulder, B.A., History and Classics

## MEMBERSHIPS

- State Bar of California
- State Bar of Arizona
- State Bar of Colorado
- State Bar of Nebraska
- State Bar of Nevada

## RECOGNITION

- Top Attorney in Real Estate and Construction Litigation *by the San Diego Daily Transcript* in 2012
- Young Attorneys Finalist *by the San Diego Daily Transcript* in 2007
- Recipient, Judge Donald P. Lay Law Review Student Prize

## COMMUNITY

- Liaison to Cardiff School Board, Citizens Oversight Committee for Proposition U

## LEADERSHIP

Mr. Smiley is an accomplished public speaker and regularly addresses the construction community on a range of legal, training and educational topics:

### Construction Law: Insurance & Indemnity

### Construction Project Management Best Practices: A Legal Perspective

### Contract Negotiation Best Practices

### Insurance Basics For The Construction Industry

### Fundamentals Of Insurance Procurement And Claims On Construction Projects

### Insurance Coverage Of Construction Projects: Getting The Most From Your Broker And Carrier

### Mechanic's Lien Law

### Construction Lien Law