

Representative Construction Litigation Matters

Massachusetts Turnpike Authority, et. al. v. Sika Corporation, et al.

Through insurance carrier XL, we are defending Sika Corporation against cost recovery and wrongful death lawsuits for more than \$300 million as the result of the collapse of a portion of the ceiling in the I-90 tunnel on the Big Dig project. Sika manufactured the epoxy for the ceiling support system. In a web of competing claims, the case presents complex design, construction, product liability, and construction management issues. There are more than ten defendants, including Bechtel, Parsons Brinkerhoff, Gannett Fleming, and Modern Continental. The cases are being defended within the context of ongoing criminal investigations.

XL Insurance Co.

We defended XL Insurance against claims asserted by Elf Atochem arising from the design and construction of a chemical process facility in Kentucky. We also resolved through mediation 21 separate lawsuits involving approximately \$100 million (CAN) in claims asserted by Shell Canada Ltd. against XL and a joint venture of five international EPCM firms headed by Fluor arising from the design and construction of the Athabasca Sands Oil Project in western Canada - a \$6 billion refinery. The claims presented complex design, construction, and product liability issues. In addition, we settled an affirmative claim against the U.S. Navy for costs incurred by XL's insured from remediation of contaminated soil at a former military base.

URS Corporation - Atlantic City/Brigantine Connector Litigation

Our attorneys represented URS Corporation in the successful resolution, through mediation, of more than \$15 million in claims arising from the design and construction on traffic infrastructure improvements in Atlantic City, New Jersey, consisting of a 2,200-foot-long tunnel with 10 bridges and 15 ramps. This engagement included the defense of alleged professional errors and omissions and claims for increased scope of work.

URS Corporation - Ringwood Mines Landfill Litigation

We also represented URS Corporation in a massive toxic tort action involving the Ringwood Mines Landfill Superfund site. This New Jersey District Court action is comprised of 45 consolidated complaints naming over 700 plaintiffs who allege an assortment of physical and mental injuries and diminution of property value. Plaintiffs allege that their injuries were caused by the disposal of contaminants and failure to properly remediate the site.

Bechtel Power Corporation v. Siemens Westinghouse Power Corporation

We successfully defended a \$75 million cumulative impact claim brought by Bechtel against Siemens in connection with a Massachusetts cogeneration project. Our representation included analysis of claims of increased scope of work and related schedule and cost issues.

Siemens Power Transmission & Distribution, Inc. – Conti Enterprises, Inc.

We are currently defending SPT&D in a \$22 million construction claim by the civil contractor arising from two turnkey HVDC Converter Station Projects in metropolitan New York City. This dispute involves claims of late and incomplete design, work scope changes, acceleration and schedule delay. This engagement includes state court litigation and strategic advice on project implementation issues.

Siemens Westinghouse Power Corporation v. NEICO/State Construction

We defended our client against \$75 million in claims in a dispute arising out of the EPC contract for a 152 MW combined cycle cogeneration plant in Ontario, Canada. The claims in this matter included breach of contract, misrepresentation, and resulting schedule impacts to engineering, construction and commissioning allegedly caused by equipment design issues.

Roche Carolina, Inc. v. Raytheon Engineers & Constructors, Inc.

We successfully defended and ultimately settled approximately \$75 million in claims arising for client Raytheon Engineers & Construction, Inc. from the design of a \$700 million pharmaceutical facility in South Carolina.

Raytheon – The PIDS Project

This matter involved transactional and claims advice in support of a \$100 million project for the design, construction and maintenance of a perimeter intrusion detection system (PIDS) for four airports located in New York and New Jersey.

Gaston Associates, et. al. v. Washington Group International, et al.

We served as lead counsel for the prime contractor defending \$35 million in subcontractor claims arising out of the construction of a radar facility in Clear, Alaska. In this capacity, we represented Raytheon in lawsuits in Massachusetts and Alaska federal courts and in an interlocutory appeal to the Ninth Circuit Court of Appeals. After obtaining the dismissal or transfer of most claims to Massachusetts, the cases settled on terms extremely favorable for our client.

Raytheon Co. v. BHP Steel

We were involved in the arbitration and resolution of a \$45 million dispute among RE&C (design/builder), BHP Steel (owner), and five major vendors supplying process equipment for construction of a \$250 million steel mill in the state of Washington.

Ogden International v. Raytheon Engineers & Constructors, Inc.

We successfully resolved through mediation a suit filed in federal district court in Florida for \$40 million in affirmative claims and counterclaims based on allegations of professional errors and omissions in the design and construction of a cogeneration power plant located in South Florida.

Raytheon Co. v. Ogden Martin

We litigated a \$40 million dispute in Florida federal court involving contractor's claims arising from construction of a waste-to-energy process plant.

The Industrial Company (TIC) – Cement Plant Modernizations

Represented TIC concerning its \$260 million EPC contracts for two cement plant modernization projects. Our services included serving as project counsel, as well as representing TIC on two major construction disputes involving claims for changes, changed conditions, and schedule impacts that were resolved through ADR.

The Smithsonian Institution

Represented The Smithsonian Institution in the development and negotiation of both the design and construction contracts for the \$200 million National Museum of the American Indian on the Mall in Washington, D.C. This engagement involved preparing the initial Request for Proposal (including customized contracts), evaluation of offers and negotiations. During performance, we also consulted with the Museum on contract enforcement and dispute resolution, including the successful defense of the default termination of the original design contract.

F.J. Sciame Construction Co.

Winston & Strawn currently represents F.J. Sciame Construction and certain of its affiliates in a lawsuit brought by the Durst Organization related to the Historic Front Street Project, a major commercial/residential real estate project in downtown Manhattan. Sciame is the construction manager on the project and also has an ownership interest in the owner/developer. Durst is a member of the owner/developer. In connection with this matter, our attorneys are handling both litigation and arbitration proceedings, which involve claims for breach of contract and breach of fiduciary duty.

Attala Generating Company, LLC

We represented Attala Generating Company, LLC in connection with a \$300 million tolling agreement termination dispute. The case involved disputed expert testimony on the cost of entry for new generating facilities and forward price curves for energy products.

Midland Cogeneration Venture, Limited Partnership

The firm represented the operator of one of the largest cogeneration power plants in the U.S. in connection with a \$55 million claim resulting from Enron's rejection of a natural gas supply contract in its bankruptcy proceeding.

USGen New England, Inc.

Our attorneys represented USGen New England, Inc. in damage claims stemming from its rejection in bankruptcy of two natural gas supply transportation contracts valued at \$47 million and \$42 million, respectively.

Framatome ANP, Inc.

We represented a leader in the design and construction of nuclear power plants in connection with the asserted misuse of trade secrets involving the design of once-through nuclear steam generating facilities.

Westinghouse Electric and Commonwealth Edison

We represented our clients in connection with a suit against the Illinois Department of Revenue, with respect to whether nuclear turbines can be classified as "special use equipment" for Illinois State tax purposes. Winston & Strawn successfully argued that the custom nature of the turbines qualified for treatment as special use equipment. The ruling was upheld on appeal.

Chicago Bridge & Iron Company N.V.

In a matter expected to become a landmark in merger challenge jurisprudence, Winston & Strawn represented Chicago Bridge & Iron Company N.V. in an appeal before the five members of the Federal Trade Commission of a decision of an FTC administrative law judge that our client's 2001 acquisition of the engineered construction division of Pitt-Des Moines Inc. was illegal. The judge ordered CB&I to divest all physical assets, intellectual property, and any uncompleted construction contracts of the PDM Divisions that were acquired. The decision will be significant

because our client is fighting to retain an acquisition that it already has fully integrated into its business, and the FTC staff seeks validation of its authority to undo completed mergers.

Connecticut Yankee Atomic Power Company (CY) v. Bechtel Power Corporation

We represented a commercial nuclear utility in the successful resolution of a \$400 million default termination dispute with Bechtel Power Corporation regarding its EPC contracts for a commercial nuclear plant decommissioning project in Haddam, Connecticut. This engagement included state court litigation, FERC rate case, and strategic advice on project completion. This dispute involved claims of legal impossibility as well as complex technical schedule, damages, and regulatory issues.

Our attorneys also represented Connecticut Yankee in connection with the decommissioning of the Connecticut Yankee nuclear generating facility.

Alstom Power, Inc. v. BBF Inc. (f/k/a Balcke Durr, Inc.)

Winston & Strawn represented Alstom in this contract dispute that arose out of design/build subcontracts for major power plant equipment. Alstom contracted with BBF to supply and install air-cooled condensers for power plants in Bellingham, Massachusetts, and Midlothian, Texas. The contract allowed for liquidated damages if the condensers did not meet certain performance guarantees. Other issues in dispute involved responsibility for work scope changes and cost and schedule overruns. The parties agreed that the outcome of all disputes would be determined by arbitration. Winston obtained a \$3.5 million award for Alstom and defeated BBF's \$8 million counterclaim. The award was confirmed by a Richmond, Virginia, circuit court on March 20, 2006. On June 8, 2007, the Virginia Supreme Court affirmed in a decision addressing the scope of review of an arbitration award in a complex construction contract dispute.

Lauren Contractors v. Alstom Power, Inc.

We successfully defended a \$23 million claim by the mechanical subcontractor against the EPC contractor for a 450 MW generation project in Midlothian, Texas.

Taiwan Power Company (TPC)

Our firm successfully assisted TPC in obtaining a replacement contractor for the architectural/engineering work on TPC's \$4 billion Fourth Nuclear Power Project in Lungmen, Taiwan. The bankruptcy of Stone & Webster (the incumbent a/e firm) presented myriad termination issues which we were successful in resolving. We also drafted and negotiated a replacement contract (ultimately with the Shaw Group) under the auspices of the Delaware Bankruptcy Court. TPC was under intense political scrutiny by a newly elected Taiwanese government, so an orderly termination and negotiation of a favorable replacement contract were of critical importance. We also won the dismissal of millions of dollars of claims against our client before the Delaware Bankruptcy Court.

Bechtel Power Group v. Washington State Utilities

We successfully resolved through mediation a suit filed in federal district court involving an affirmative claim by Bechtel against the utilities and a counterclaim for professional errors and omissions, arising from the design and construction of a hydro power plant located on the Columbia River in Washington State.

Kawasaki Heavy Industries, Inc. (KHI)

We are representing KHI in disputes arising from its EPC contract for a cogeneration plant in Mexico. Our work on this matter includes presentation of extra work and schedule claims, as well as advice on subcontract close-out issues.

Cubic Transportation v. Scheidt & Bachmann

In December 2004, the U.S. District Court for the District of Columbia granted our motion to dismiss a cause of action filed by Cubic Transportation Systems challenging a \$100 million contract award for automated fare collection equipment made by the Massachusetts Bay Transportation Authority (MBTA) to client Scheidt and Bachmann (S&B). Winston was retained by S&B after Cubic's first challenge of the award, brought before the FTA, resulted in a ruling against S&B. Our attorneys fully litigated the matter, and the FTA reversed its initial finding and issued a precedent-setting decision in S&B's favor. Cubic then filed a series of actions in Massachusetts state court in which we prevailed for S&B at the trial court level as well as before the state appeals court. When the Massachusetts Supreme Court agreed to hear Cubic's emergency appeal of one of the decisions, we successfully briefed and argued the case on behalf of S&B.

Monsanto Company

Our firm assisted Monsanto Company in the successful resolution of construction claims brought by Asea Brown Boveri, the turnkey contractor for Monsanto's \$250 million chemical plant project in Camacari, Brazil. This engagement included schedule and damages analyses as well as advice on project close-out issues.

The Heard Museum

We were engaged by the Museum to prosecute a multimillion-dollar defective design claim against the design team for the Museum's \$20 million Education Expansion Project in Phoenix, Arizona. Our attorneys participated in an alternate dispute resolution process that resulted in a substantial payment to the Museum and provided strategic advice on project completion.

Adamson Architects

We represented Adamson Architects, one of Canada's largest design firms, and its insurer, Pro-Indemnity, Inc., in the successful defense of a \$10 million professional negligence claim arising out of Adamson's contract to design several buildings for St. John's University in New York. This case was brought in New York state court and was resolved prior to trial.

CIGNA Property & Casualty Insurance Company

We were engaged by CIGNA Property & Casualty Insurance Company as surety to Trinity Industries, Inc. in an appeal of an adverse \$31.8 million judgment arising from alleged delays and errors and omissions in the construction of the Marriott Marquis Hotel in Manhattan. We obtained a complete reversal in the U.S. Court of Appeals for the Second Circuit.

We also won summary judgment for CIGNA in an appeal before the New York State Supreme Court of a \$40 million judgment against our client in connection with a performance bond surety matter involving a condominium conversion project in Long Island, New York. The New York Supreme Court Appellate Division unanimously affirmed a lower court's judgment, stating that the plaintiff had failed to introduce the high level of proof necessary to avoid pretrial dismissal of a claim for reformation of a contract based on a mutual mistake.

Saskpower International, Inc. and Atco Power Canada, Ltd. v. UMA/Black & Veatch, Ltd.

We are currently defending UMA (a subsidiary of AECOM) and Black & Veatch against more than \$25 million of claims in the Queens Bench Provincial Court in Regina, Saskatchewan. UMA and Black & Veatch prepared the project design and performed the design component of the procurement effort for a cogeneration project constructed by Saskpower and Atco in Saskatchewan.

Suitt Construction Company v. United States Sugar Corporation

We represented the project owner of a \$65 million, 19-building “state-of-the-art” citrus processing facility in central Florida. Our attorneys served as lead counsel on two lawsuits in Florida federal and state court arising out of multimillion-dollar claims by trade contractors for defective design and schedule delays.

OAK Florida, Inc. v. United States Sugar Corporation

Our attorneys successfully defended claims brought by the major electrical and mechanical contractors for the design and construction of a \$125 million expansion of a sugar refinery in central Florida.

National Steel v. Westinghouse Electric Corporation

We served as lead counsel for a turnkey contractor defending a \$10 million construction claim by the mechanical contractor and piping supplier arising out of the construction of a 150 MW cogeneration facility in Newark, New Jersey. This litigation, which involved a five-week federal court trial in Kentucky, was resolved through mediation.

J. A. Jones Group v. Westinghouse Electric Corporation

We served as lead counsel for the turnkey contractor in two disputes arising out of the design and construction of major resource recovery facilities in Pennsylvania. This engagement included the defense of contractor claims for work changes, labor and efficiency, defective structural design, and schedule delays. The claims were resolved through a “mini trial” procedure.

General Engineering Corporation v. Martin Marietta Aluminum, Inc.

Our attorneys represented the mechanical/electrical multiple prime contractor in a \$40 million dispute arising out of the expansion of the largest aluminum processing facility in the Western Hemisphere. The claims prosecuted in this matter related to labor inefficiency, lack of owner coordination, and related schedule impacts. This dispute was successfully litigated in federal court in St. Croix.

SAE/Americon/MidAtlantic, Inc. v. United States General Services Administration

We represented SAE, the U.S. subsidiary of Eiffage, France’s largest construction company, in a default termination dispute with the U.S. General Services Administration. Claims in excess of \$14 million regarding differing site conditions, defective specifications, and related schedule impacts were prepared and litigated through a 42-day hearing before the General Services Board of Contract Appeals. The GSBCA converted this default to a termination for the convenience of the government resulting in a \$19 million judgment for SAE.

Guy F. Atkinson Corporation v. United States Bureau of Reclamation

Our attorneys prosecuted a \$54 million claim for differing site conditions and delay related to the construction of an earthen dam in Carlsbad, New Mexico. The parties agreed to mediation and the matter was resolved. This settlement remains the largest mediated settlement of a federal civil works construction claim.

Monterey Construction Company v. SEI/Daniel

We prosecuted a \$28 million claim on behalf of the prime civil contractor in connection with the construction of the Murray Hydroelectric Plant in North Little Rock, Arkansas. This matter involved claims of differing conditions, defective specifications, and related schedule and cost overruns. It was litigated in multi-state federal court litigation and resolved through mediation.

Kawasho International, Inc. v. Mitsui Construction Co., SsangYong Engineering & Construction Co., Inc. and ACE Insurance Co.

Our attorneys successfully defended an insurance carrier in a \$200 million dispute litigated in the U.S. Territory of Guam involving the respective liability of the contractor, architect/engineer, and construction manager for alleged defective work that caused the collapse of a high-rise condominium project.

ACE Insurance Co. v. American Home Ins. Co. et al.

Our attorneys successfully prosecuted a claim in Florida federal court against Cogefar USA and American Home Ins. Co. arising from the construction of the Federal Detention Center in Miami.

Kora & Williams and Insurance Company of North America v. District of Columbia

Our attorneys recovered \$42 million from the owner arising from the default termination of a construction contractor for the Union Station project. The case involved separate trials on liability and damages and an appeal to the D.C. Court of Appeals. The termination for default was converted to a termination for convenience, which resulted in a nearly 100 percent recovery.

Ohio Casualty v. United States

We litigated a \$10 million dispute with the Department of the Navy before the Court of Federal Claims arising from a facilities construction contract in California that resulted in a 100 percent judgment for our client.

Ocean Marine Navigation, Ltd. v. Military Sealift Command

We were counsel to the prime contractor in a \$150 million ship construction contract with the Department of the Navy. A threatened default was converted to a termination for convenience, and a multimillion-dollar settlement was achieved without formal litigation.

Practice Areas

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About Winston & Strawn

Winston & Strawn LLP is an international law firm with 950 attorneys among eleven offices in Charlotte, Chicago, Geneva, London, Los Angeles, Moscow, New York, Newark, Paris, San Francisco, and Washington, D.C. The exceptional depth and geographic reach of our resources enable Winston & Strawn to manage virtually every type of business-related legal issue. We serve the needs of enterprises of all types and sizes, in both the private and the public sector. We understand that clients are looking for value beyond just legal expertise. With this in mind, we work hard to understand the level of involvement our clients want from us. We take time to learn about our clients’ organizations and their business objectives. And, we place significant emphasis on technology and teamwork in an effort to respond quickly and effectively to our clients’ needs.

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