COSGRAVE
VERGEER KESTER

Construction

Construction clients and their insurers value our extensive experience in litigation involving claims for delay and defect in construction, design, or products, as well as claims brought by injured workers under Oregon's Employer Liability Act. We excel at aggressively but efficiently litigating complex, multi-party construction claims. Effective use of electronic discovery is a key component of our efficiency and success, especially when a case involves hundreds of thousands of documents.

Cosgrave represents clients throughout the construction industry, including developers, engineers, owners, architects, contractors, building materials manufacturers and suppliers, and insurance professionals. Our experience also runs the gamut:

- CCB issues
- Construction defect claims
- Contract disputes
- Contract formation
- Delay claims
- Design defect claims
- Employment law
- Environmental issues
- Foreclosures
- Insurance procurement and liability
- Liens
- OSHA analysis and defense
- Product liability
- Project planning

PRACTICE AREAS

Arbitration & Mediation

Business & Commercial Litigation

Business & Corporate Law

Construction Services & Litigation

Employment Law

Employment Litigation

Environmental Law & Toxic Torts

Product Liability

Professional Liability

Real Estate Law

Taxation

ATTORNEYS

Chester D. Hill

Joshua R. Kennedy

Julie A. Smith

Andrew T. Burns

Carla J. Grabarek

Charles J. Huber

Representative Clients

- ABC Roofing Company, Inc.
- AIG
- Bella Green Construction, LLC
- Brookwood Insurance Company
- Canam Steel Corporation
- Chubb Group of Insurance Companies
- Clayton Homes
- EA White Construction Company
- Everest National Insurance Company
- Farmers Insurance Company
- Ferguson Supply
- Joseph Hughes Construction
- Knife River Corporation
- LaFarge North America
- Lifetime Exteriors
- National Indemnity
- Nu Park Development LLC
- One Beacon Insurance Company
- Oregon Helical Piers LLC
- Pence Kelly Construction Company
- Pinnacle NW Construction Company
- R & H Restorations Company
- RWC Development Incorporated

- Silco Construction Company
- Time Frame Incorporated
- Tremco Incorporated
- Unitrin Insurance Company
- Walen Construction
- Wilson Construction Company

Representative Cases

- Construction Defect – Represented the general contractor in a $30 million construction defect suit, one of the largest in the history in our state. The suit involved a condo project in Government Camp, Oregon, with 24 parties and claims of defective design, defective construction, and product liability. By being thoroughly prepared to take the case to trial, and by establishing rational, fact based allocations to the many subcontractors and suppliers, we achieved a very positive outcome for our client. In addition, we obtained complete summary judgement for the developer/general contractor in two separate defect suits both with prayers of several million dollars.
- Defective VRF/VRV HVAC System – Successfully represented contractors, designers, and owners in multiple claims arising from defective VRF/VRV HVAC system design and installation.
- Defective Windows – Represented Dalke Construction, the general counsel in the Spirit Mt Casino project in a multi-million dollar defect construction case. We sued the window manufacturer alleging that the windows were leaking due to defectively manufactured “thermal breaks”. After ASTM tests proved the problem, the manufacturer installed new windows.
- Commercial Paving – Represented J&R Paving, the paving subcontractor for a Costco construction project. Plaintiff, a bicyclist, suffered fractured vertebra resulting in ventilator dependent quadriplegia when he struck a paving seam between old and new pavement created by our client. Plaintiff had no memory of the accident. Our re-creation of the accident showed that plaintiff tried to jump the seam and the front wheel of his bicycle fell out, jammed into his frame and flipped him over the handlebars. We brought in the manufacturer of the bicycle, which paid its policy limits to settle the case.
- Defective Valve – Represented the general counsel of a mid-sized commercial building sued by its owner, a dentist, after a plumbing failure caused $500,000 in damage. We proved that the leak was caused by a defective valve installed by the plumbing subcontractor. The plumber denied our tender of defense. After trial in federal court, a jury returned a defense verdict, and we were able to obtain judgment against the plumber for our defense fees.
- Natural Gas Pipeline – Represented installer of natural gas pipeline in Medford, Oregon. Plaintiffs claimed the gas

pipeline was installed incorrectly and that the contractor failed to return the land to its original condition. Through discovery and inspection, we convinced plaintiffs to dismiss all claims relating to the installation of the pipeline. In a separate settlement, defendants resolved the issue relating to restoration of plaintiff's land.

- Defective Asphalt Runway – Plaintiff brought suit for more than $20 million in money damages against client as a result of allegedly defective asphalt work performed at an airport in 2009. Plaintiff's primary complaint was that aggregate used in the project failed to meet project specifications, causing "pop-outs" in the asphalt. Client denied all allegations and countered that it had satisfied all the tests set forth by plaintiff and its engineer in the contract documents. The case was resolved to our client's satisfaction when plaintiff agreed to accept partial repairs to be funded by the various parties.
- Coverage Litigation – Represented developer/general contractor in construction defect lawsuit. The purpose of representation was to ensure meaningful participation and ultimately indemnification from developer/general contractor's insurance carrier. Ultimately, client's insurance carriers paid claim with no additional payment required from our client.
- Decommissioned Oil Tank – Represented contractor who installed an underground heating oil tank. The oil tank had ruptured during its decommission. Plaintiff eventually dismissed its claim against our client after sharing legal arguments relating to the statute of ultimate repose.

Affiliations

- Asphalt Pavement Association of Oregon
- ALFA International Construction Practice Group
- Claims and Litigation Management Alliance
- Defense Research Institute
- Oregon Association of Defense Counsel
- Oregon Real Estate Home Inspectors Association
- Portland Homebuilders Association