Kirk J. McCormick

SHAREHOLDER

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OVERVIEW

Kirk J. McCormick is a shareholder of the firm, Chair of the firm's **Construction Law Group**, and a member of the firm's **Litigation Department**. Kirk represents general contractors, subcontractors, sureties, owners, architects, and engineers throughout the United States on public and private construction projects. He assists clients with payment and performance bond claims, subrogation issues, construction defect claims, CGL and professional liability insurance issues, mechanic's liens, and contract administration and termination. Kirk's practice involves preparing, submitting, and defending delay claims, as well as claims concerning differing site conditions, defective specifications, access restraints, and lost productivity. He also has extensive experience with federal, state, and local government contracts, including bid protests, default terminations, False Claims Act defense, and procurement and contract administration under the Federal Acquisition Regulation (FAR) system and state and local procurement laws.

In addition to his experience with construction and government contracts, Kirk also has extensive experience litigating and counseling clients concerning complex business and regulatory matters, including real estate disputes, import and export regulations, condominium law, risk avoidance, and other general commercial matters.

Kirk has represented clients in trials, arbitrations, and mediations throughout the country, with lead responsibility for overseeing trial teams and developing and implementing settlement and negotiation strategies. At all times, Kirk is focused on the client's bottom line and achieving the best possible outcome as quickly and inexpensively as possible.

Associations & Organizations

- American Bar Association
- Associated General Contractors of America
- Boston Bar Association
- Massachusetts Bar Association
- Town of Reading Permanent Building Committee

HONORS & AWARDS

- *Boston* Magazine Top Lawyer (2024, 2025)
- *Best Lawyers in America*, Litigation – Construction (2025, 2026, 2027)

REPRESENTATIVE MATTERS

Construction Litigation

PRACTICE AREAS

Construction Law

Litigation

EDUCATION

B.A., Political Science, University of Kentucky, Lexington, KY, *summa cum laude*, 1996

J.D., Georgetown University Law Center, Washington, D.C., *cum laude*, 2001

ADMISSIONS

- Massachusetts
- District of Columbia
- Virginia (Inactive)
- U.S. Court of Federal Claims
- U.S. District Court for the District of Columbia
- U.S. District Court for the Eastern District of Virginia (Inactive)
- U.S. Court of Appeals for the Federal Circuit
- U.S. Court of Appeals for the 4th Circuit

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- Represented general contractor in a 7-day arbitration hearing against a subcontractor concerning the Dulles Air Traffic Control Tower project in Virginia. The subcontractor sought damages for lost productivity, extended field office overhead, *Eichleay* home office overhead, certain second-tier subcontractor pass-through claims, and other costs. Client counterclaimed for legal and consulting fees incurred during the subcontractor's earlier negotiations with the owner. The arbitrator denied the subcontractor's claims in their entirety and awarded the full amount of the client's counterclaims.
- Represented general contractor in multiple claims against subcontractors and CGL insurance carriers arising out of U.S. Air Force project at Malmstrom Air Force Base in Montana. Negotiated settlements in which clients recovered several million dollars. The settlements greatly exceeded the initial projected recovery and resulted in a recovery-to-fee ratio of approximately 10 to 1.
- Represented general contractor pursuing differing site conditions claims against U.S. Army Corps of Engineers arising out of project at Vandenberg Air Force Base in California. Settlement resulted in payment of approximately 95% of client's claim.
- Represented subcontractor pursuing pass-through claims against U.S. Army Corps of Engineers concerning delayed review of submittals for a segmented retaining wall at Newtown Armed Forces Reserve Center in Danbury, Connecticut. Defeated Government motion for summary judgment and obtained favorable settlement.
- Represented general contractor in a Big Dig-related lawsuit against elevator subcontractor. Lawsuit sought several million dollars in liquidated damages assessed against general contractor by the project owner, plus extended general conditions and other costs incurred by general contractor due to delayed completion of elevators. Defeated subcontractor's motion for summary judgment and obtained favorable settlement.
- Represented general contractor in disputing a default termination on a U.S. Navy project in Maryland. Settlement resulted in conversion of termination for default into a termination for convenience without any litigation.
- Represented general contractor pursuing claims against the U.S. Army Corps of Engineers arising out of the construction of a pump station and modified water delivery system in Dade County, Florida. Obtained favorable settlement at conclusion of 2-day mediation.
- Represented private owner in a 2-week arbitration hearing against the project architect concerning architect's specification of defective stone materials on a $70 million project. Defeated architect's dispositive motions and obtained favorable award from arbitration panel.
- Successfully defended contractor in arbitration proceedings against allegations of defective construction of assisted living facility in Agawam, Massachusetts. Obtained summary judgment and complete dismissal of all claims, which sought several million dollars in alleged direct damages as well as treble damages and attorney fees under M.G.L. c. 93A.
- Represented general contractor and surety and first-chaired a 2-day bench trial in a lawsuit in Virginia's Fairfax County Circuit Court by a subcontractor on a Virginia Railway Express project.
- Represented general contractor and negotiated a favorable settlement in a case involving over 100 disputed change orders arising out of the build-out of General Services Administration (GSA) space in an office building in Philadelphia. The case also involved the successful renegotiation of the liquidating agreement between the client and the lessor of the GSA space (in whose name the claims were being pursued).
- Represented general contractor and surety and prepared comprehensive Request for Equitable Adjustment (REA) arising out of the $97 million Silver Line bus tunnel under the Fort Point Channel in Boston. REA was based upon dozens of distinct claims under several different theories, including lost productivity, differing site conditions, deficient design, access restraints, and adjacent contractor interference. Obtained favorable settlement.
- Represented general contractor and surety in litigation concerning differing site

conditions encountered at the $33 million Brightman Street Bridge project in Fall River, Massachusetts. During expert depositions, obtained key admissions that the geotechnical report and soil borings did not adequately represent site conditions at project. Obtained favorable settlement.
- Represented subcontractor's surety in a performance bond lawsuit filed by the general contractor in U.S. District Court for the Eastern District of Virginia. Obtained favorable settlement.

Government Contracts: Bid Protests

- Represented protester in successful pre-award GAO bid protest arising out of the U.S. Air Force procurement of water main replacement work at Wright-Patterson Air Force Base in Ohio. In response to the protest, the Air Force took corrective action and subsequently awarded client the contract.
- Represented protester in GAO bid protest regarding award of ID/IQ firm fixed-price, single-award task order construction contract.
- Represented protester in GAO bid protest regarding solicitation for Defense Department propeller shafts. Prepared protest submission and subsequent motions papers concerning whether client qualified as an interested party and other issues.
- Represented protester in GAO bid protest regarding solicitation for medical adjudication services at federal prisons. Prepared protest submission and subsequent requests for clarification.
- Represented protester in Maryland State Board of Contract Appeals protest concerning solicitation for a Medicaid claims management system.

Government Contracts: Other Areas

- Assisted contractor with withdrawal of mistaken bid in context of $80 million U.S. Army Corps of Engineers procurement. Contractor was allowed to withdraw bid and obtain release of bid bond.
- Advised contractor regarding the steps associated with obtaining Facility Clearance (FCL) for U.S. Army Corps of Engineers project in Israel.
- Represented government contractor in claim filed with the former DOTCAB (current CBCA). Defeated Government motion for summary judgment and subsequently negotiated favorable settlement.
- Successfully defended Section 8(a) Minority Small Business in qui tam lawsuit filed in U.S. District Court under the False Claims Act.
- Represented general contractor on a large infrastructure project in Afghanistan. Conducted investigation of alleged improper billing practices and advised client regarding same in light of amendments to FAR concerning contractors' ethics and reporting requirements.
- Represented Turkish furniture vendor in Armed Services Board of Contract Appeals (ASBCA) litigation arising out of Air Force purchases of furniture at Incirlik Air Base in Adana, Turkey. Defeated Government motion to dismiss and negotiated favorable settlement.
- Advised several clients regarding the scope, interpretation, and application of the Buy American Act (BAA) and its regulatory impact, as well as the interplay between the BAA and the Trade Agreements Act.
- Analyzed proposed teaming agreement for compliance with the Small Business Administration's Historically Underutilized Business Zones (HUBZone) regulations and ostensible subcontractor rule.
- Analyzed Prompt Payment Act and implementing regulations governing late payment penalties in order to prepare template demand letters for government contractor clients.
- Advised client regarding whether certain costs were allocable and reasonable under the FAR.

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- Advised client of FAR provisions governing suspension and debarment and likelihood of competitors' suspension/debarment for possible violations of the FAR.
- Advised client regarding requirements pertaining to certified cost and pricing data under FAR subpart 15.4.
- Analyzed FAR provisions governing subcontracting plans and advised client regarding same.

Published Decisions

Tocci Bldg. Corp. v. IRIV Partners, LLC, 2020 Mass. Super. LEXIS 152 (Mass. Sup. Ct. Nov. 11, 2020)

Pro-Spec Corp. v. Chester Water Authority, et al., 2017 WL 2797897 (E.D. Pa. June 28, 2017)

Tutor Perini Corp. v. Montgomery Kone, Inc., 2016 WL 3184420 (Mass. Sup. Ct. May 16, 2016)

Korte-Fusco Joint Venture, ASBCA No. 59767, 15-1 BCA P 36158, 2015 WL 7307913

Liberty Mutual Ins. Co. v. United States, 70 Fed. Cl. 37 (2006)

Redwood Furniture Co. Ltd., ASBCA Nos. 54944, 55420, 55421, 06-2 BCA P 33317, 2006 WL 1740380

Medical Dev. Int'l Ltd., Inc. v. U.S. Dept. of Justice, DOTCAB No. 4547, 06-2 BCA P 33405, 2006 WL 2716917

PUBLICATIONS

- **As Construction Projects Ramp Back Up, What Does Your Contract Say About Who Bears the Costs of Delays?**, (May 2020)
- Ten Considerations When Negotiating Your Restaurant Construction Contract, (August 2018)
- **A Summary of the Basics of the Massachusetts Mechanic's Lien Statute**, *New England Real Estate Journal* (October 2017)
- When a Contractor Can Stop Work on a Troubled Project, *Law360* (April 2015)
- Civilian Board of Contract Appeals Allows Contractor to Stop Work on Troubled VA Project, Hinckley Allen Construction Newsletter (March 2015)
- Beware of Upcoming Significant New Reporting Obligations for Federal Contractors under the 'Fair Pay and Safe Workplaces' Executive Order, *Construction Outlook Magazine* (February 2015)
- Federal Circuit Provides Guidance on Differing Site Conditions Claims and Broadens the Scope of the Implied Covenant of Good Faith and Fair Dealing, Hinckley Allen Construction Newsletter (June 2014)
- So, You're Telling Me There's a Chance: The Impact of *TigerSwan v. US* on Contractor Challenges to Terminations for Convenience, WTHF Newsletter (Summer 2013) S
- U.S. Supreme Court Deals Blow to Heightened Judicial Scrutiny of Arbitration Awards, WTHF Newsletter (Spring 2008)
- The Withdrawn Sub-Bid: When Will the Subcontractor Be Bound?, WTHF Newsletter (Summer 2006)
- Performance Bond Surety Claims against VDOT – Performance Bond Does Not Establish Direct Contract with Commonwealth, Construction Law and Public Contracts News, Virginia State Bar, 2006; WTHF Newsletter (Fall 2006)
- The Duty to Preserve Evidence – Did You Delete or Shred When You Should Have Saved?, *Washington Building Congress Bulletin*, June 2002; *ECA Magazine*, June 2002; *Virginia State*

Bar Construction Law Section Newsletter, 2002; WTHF Newsletter (Winter 2002)

SPEAKING ENGAGEMENTS

- Speaker, ABA Forum on Construction Law: Construction Law Essentials / Sticks and Bricks, (October 2021)
- Speaker, RIW Webinar: Construction Law Basics: Essential Concepts Every Contractor and Owner Should Know, (June 2021)
- Speaker, RIW Webinar: Essential Federal Construction Claims Administration, (December 2018)
- C0-Speaker, Construction Management Association of America Webinar: Have We Reached a Fair Settlement? Exposure Evaluation, (May 2018)
- Co-Speaker, National Contract Management Association Boston's 57th Annual March Workshop: Top Ten Pitfalls/Hot Topics in Government Contracting, (March 2018)