

CONSTRUCTION

Hodgson Russ's Construction Practice helps clients meet their unique project goals by understanding, minimizing, and balancing risks. Our attorneys have extensive experience with construction industry contracts, industry practices, and compliance issues. We understand the importance of protecting clients' interests at each stage of a project, from the design phase through bidding, negotiation, contracting, and dispute resolution. We are frequently involved in a project from its inception, assisting in planning, obtaining environmental and other approvals, and drafting project agreements. We help our clients in this area throughout the lifecycle of their construction project.

The scope of our construction services is extensive, encompassing transactional issues, environmental law matters, labor and personnel concerns, financing, insurance, government compliance, and dispute resolution. Our attorneys draft and negotiate public and private contracts for projects of all sizes and significance, including owner-contractor, owner-designer, design-build, construction management, joint venture, subcontractor, and supply agreements. Our attorneys represent clients in defending and prosecuting claims of all types, from liens to contractual disputes.

Through preparation, counseling, and planning, we help our construction clients avoid, whenever possible, the costs and disruptions of legal disputes. When litigation is necessary, our attorneys represent clients aggressively in court, arbitration, and administrative proceedings. We are also experienced in mediation and other dispute resolution techniques. Most important, we have a proven track record of success.

Hodgson Russ's skills and experience create enduring relationships throughout the construction industry. Located across the United States and Canada, our clients include owners, contractors, architects, engineers and other design professionals, builders, subcontractors, suppliers, sureties, insurers, and lenders. Hodgson Russ has been awarded prestigious "Best Law Firms" Metropolitan Tier 1 rankings by *Best Lawyers/U.S. News & World Report* in the Litigation - Construction and Construction Law categories.

In September 2018, Christofer Fattey, Terrence Gilbride and Benjamin Zuffranieri, Jr. were selected as Fellows of the Construction Lawyers Society of America (CLSA).

The CLSA is an invitation only international honorary association composed of preeminent lawyers who focus their practices on construction law and related fields. Fellowship is limited and selective, with lawyers being invited to Fellowship upon a proven record of excellence and accomplishment in construction law, including transaction structuring, arbitration, mediation and trial and appellate advocacy.

Contact

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Professionals

Attorneys

Catherine Grantier Cooley
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Jason Markel
Christopher Massaroni
Scott Paton
Rafael Pignataro
Chelsea Reinhardt
Aaron Saykin
Christian Soller
Brianna Szopinski

Managing Partner

Benjamin Zuffranieri Jr.

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Experience

Hodgson Russ represented a local real estate developer in negotiating a \$142 million joint venture with large national private equity firm to construct senior housing projects nationwide.

Lead counsel for public authority in complex environmental and construction litigation involving multiple contractors and insurers, successfully achieved multi-million dollar settlement in mediation.

On behalf of a major construction company, Hodgson Russ attorneys successfully argued an appeal that expanded case law interpreting a key Industrial Code regulation that often underpins Labor Law § 241(6) claims. The ruling helped limit liability for the client and will do so for other construction companies going forward.

Represented a national brewery in the negotiation of construction contracts for the expansion of the brewery at an approximately value of \$5,330,000.

A Hodgson Russ team represented the Buffalo Sabres and its affiliate, HARBORCENTER, in conjunction with the development of HARBORCENTER, an approximately \$200 million, 600,000-square-foot sports, retail, entertainment, parking, and hospitality complex. This first-of-its-kind mixed-used facility includes two ice rinks; a 19-story, full-service Marriott hotel; a sports-themed nightclub and restaurant; retail space; and an 800-car parking facility, all of which are connected to the existing Key Bank Center via skywalk. Hodgson Russ has worked with the Sabres on all aspects of this project from its inception, including environmental review, contract negotiations, permitting, construction, economic development incentives, financing, and tax planning.

Represented a foreign nation in the negotiation of an interior design and project management agreement for the buildout of the consulate.

A Hodgson Russ team led by Mr. Gilbride has served as counsel to the program provider for the \$1 billion City of Buffalo public school refurbishment, renovation, and modernization project. This project, which required seven separate special pieces of state legislature resulted in the renovation of more than 48 antiquated public school buildings. Hodgson Russ's representation extends to all aspects of this unique public-private partnership project, including procurement of state legislation, assistance in securing state education department SED approvals on construction and financing, assistance with development of strategies and funding sources for the city's portion of the project costs, assistance in procurement of tax-exempt bonding, assistance with the State Environmental Quality Review Act review process, counsel regarding MBE/WBE compliance and workforce development, and procurement of all necessary architectural and construction services.

Represented a private school in the negotiation of AIA design and construction agreements for approximately \$3.2 million construction of new science building.

Hodgson Russ successfully defended a public housing authority in a \$5 million lawsuit arising from the termination of a contractor on a hazardous material abatement and demolition project. Our work included pursuing counterclaims for damages arising from the conduct of the contractors on the same project and achieving a multi-million dollar settlement for the authority in mediation.

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Represented a charter school client in the negotiation of design and construction contracts, AIA B132-2009 Construction Manager as Advisor, for an approximately \$15 million dollar project to construct a new elementary K-5 school.

Represented a religious institution in the negotiation of a design and development agreement for the development of market rate apartments in a historic three story rectory building in downtown Buffalo.

Hodgson Russ served as counsel to a New York State county in conjunction with the development of a new municipal courthouse facility. This project took advantage of statutory modifications exempting public construction projects with project labor agreements from the multiple prime contractor requirements of the Wicks Law. This structure enabled the project to come in on time and below budget. We also served as State Environmental Quality Review Act (SEQRA) counsel for this project and successfully defended the county in litigation brought on environmental and state law grounds.

Mr. Gilbride represented a nonprofit affiliate of the University at Buffalo in conjunction with land acquisition for the development of the new School of Medicine and Biomedical Sciences facility in downtown Buffalo. This \$450 million facility, which anchors the university's new downtown campus, represents the largest single construction project ever undertaken by the State University of New York and incorporates an operational subway station in the lobby. This feature necessitated negotiation of a first-of-its-kind long-term air rights lease agreement with the Niagara Frontier Transportation Authority.

Represented a Canadian manufacturing client in the development of a set of construction documents for its use in the installation of its products.

Hodgson Russ attorneys represented a public authority in a multimillion dollar construction litigation filed by a contractor involving the rehabilitation of runways at the Buffalo International Airport. After discovery, our attorneys obtained summary judgment on behalf of our client. The summary judgment dismissal was affirmed by the Appellate Division.

Represented a public school district client in the negotiation of an approximately \$1.7 million energy performance contract.

Represented a continuing care retirement community client in the negotiation of design and construction manager as constructor contracts, cost plus with a GMP, for an approximately \$6,000,000 expansion of their health center and skilled nursing unit.

Represented a lumber company in the negotiation of ConcensusDocs for an approximately \$800,000 expansion of their existing plant

Secured favorable jury verdict in Suffolk County Supreme Court in a Labor Law 240 trial involving a plaintiff who was injured in a construction accident.

Michael D. Zahler and Christian J. Soller won summary judgment in favor of a construction client. In 2019, a school district retained the client to perform the electrical contracting work for an addition to an elementary school. Soon after work began, a dispute arose between the client and the general contractor concerning responsibility for excavation and trenching work and the placement of bedding material for electrical underground utilities. The client notified the school district that the work was outside the scope of its contract and that it would seek additional compensation if compelled to perform the work. Pursuant to the terms of the governing contracts, the school district deferred to the architect who agreed

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with the general contractor that the work was included in the client's contract. The school district in turn directed the client to perform the work without additional compensation. The school district refused to engage in settlement discussions until the Court decided its motion for summary judgment. On April 11, 2022, the Supreme Court denied the school district's motion for summary judgment and granted the client's cross-motion for summary judgment, holding that, contrary to the architect's determination, the disputed work is outside of the client's responsibility under its contract and that the client is entitled to recover the full amount sought for performing the additional work.

A Hodgson Russ team led by Ryan Lucinski successfully defended a major construction company, a municipality, and a school district in a lawsuit filed by a union carpenter who fell on "black ice" on a construction site and allegedly sustained career-ending injuries. The plaintiff contended that the defendants were negligent and violated Labor Law § 241(6). At trial, Ryan was able to exclude the testimony of plaintiff's meteorologist and counter with evidence of weather reports that refuted the alleged icy condition at the time of incident. After two weeks of proof, the jury returned a unanimous no-cause verdict in favor of our clients.

Lead counsel in multi-million dollar construction arbitration involving differing site condition claims in connection with the construction of a warehouse distribution center.

Hodgson Russ represented a nonprofit corporation in conjunction with the development and construction of an \$11 million twin pad ice arena in Lockport, New York. This representation includes the negotiation of all construction, financing, naming rights, and management agreements for the facility

As reported in the [New York Times](#), Micron announced the siting of a chip factory complex in the Town of Clay, located north of Syracuse, NY. Micron has retained a team of Hodgson attorneys (Chris Canada (Albany), Glen Doherty (Albany), Chris Doyle (Buffalo), Terry Gilbride (Buffalo), John Godwin (Buffalo), Joe Scott (Albany) and Jeff Swiatek (Buffalo)) to handle IDA, construction, real estate, tax and labor matters. The firm has already handled a significant amount of work of the matter relating to the structuring and completion of a Project Labor Agreement with the local trade unions through the efforts of Glen Doherty, with support by John Godwin and Jeff Swiatek.

The project is expected to be undertaken in multiple phases over a 10 year period, and involve the investment of over \$100 billion. Job estimates include 9,000 Micron employees and over 40,000 jobs for suppliers, contractors and vendors.

The firm secured the work through a contact/referral at the Greenberg Traurig firm, who is acting as government relations consultant to Micron. In addition, the firm was able to demonstrate the experience and skill set necessary to handle such an engagement by describing the work currently being handled by the same team members for a \$300M offshore wind manufacturing project to be sited in the Port of Albany.

Assisted a distributor of specialty office products and printing machines in the acquisition, financing and construction contracts for the purchase and renovation of their offices in Kansas and North Carolina.

Lead negotiator for private developer of sports and entertainment complex, successfully resolved through negotiation a high seven-figure dispute involving construction delays, inclement weather, and interference claims.

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Represented a real estate investor in the negotiation of AIA construction documents for an approximately \$1.8 million dollar development of a branch for a regional lift equipment company.

Represented a Canadian company in the negotiation of a design-build agreement for the development and construction of an approximately 31,000 square foot addition to a U.S. manufacturing facility.

Represented a client in the negotiation of an Owner-Contractor agreement for the build-out of retail and showroom space in a Manhattan office building.

A Hodgson Russ team led by Terrence M. Gilbride recently completed the successful representation of a joint venture in conjunction with the structuring, development, and construction of a 200-vehicle, \$160 million bus garage/service facility in the Mid-Atlantic region for one of the nation's largest metropolitan transportation authorities. The project was undertaken through a joint venture between a real estate development company and a large national engineering firm. The joint venture and the transportation authority utilized a public-private partnership to develop the facility and was able to significantly reduce operating expenses and achieve significant cost and time savings in the construction of the project.

Represented a document management services company in the negotiation of AIA design and construction manager as contractor contracts, cost plus with a GMP, for the redesign of a newly purchased facility.

Provided legal assistance on approximately nine matters for several school districts with a total capital project value of approximately \$66 million dollars.

Secured summary judgment in a breach of contract suit against a builder-client sued in Rensselaer County for failing to return the purchaser's deposits towards the construction of a new home.

Sole arbitrator in construction dispute involving defective work and delay in connection with new construction.

Represented a higher education client in the negotiation of an AIA design agreement for the remediation of its sports fields.

Lead counsel for school district, successfully resolving in mediation complex commercial/construction disputes involving both general contractor and architect.

Secured summary judgment for large construction management company client in a Labor Law 240 case involving a young, catastrophically injured plaintiff that was ultimately tried in New York County Supreme Court and yielded a jury verdict of approximately \$26 million.

A Hodgson Russ team led by Terrence M. Gilbride represents five state university-affiliated foundations in conjunction with the development and operation of 11 privatized student housing projects on the campuses of University at Buffalo, SUNY Canton, Buffalo State College, and SUNY Purchase. This representation involved the creation of a unique financing model for the development and construction of on-campus student apartments with 100 percent private funding. This representation includes negotiation and drafting of all lease and facility related agreements between SUNY and the nonprofit sponsors of the individual housing projects.

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Warded off summary judgment to plaintiff in a Labor Law 240 case pending in Orange County arising from plaintiff's fall from a ladder on a construction site, where the Court was persuaded that plaintiff's own conduct may have been the sole proximate cause of his accident and injuries.

In the News

Coronavirus Resource Center

Thought Leaders - We are in a better place than we were one year ago
Buffalo Business First, March 26, 2021

Industry Roundtable: Construction
Albany Business Review, June 19, 2020

Hodgson Russ Partner Benjamin M. Zuffranieri, Jr. Inducted Into Litigation Counsel of America
May 30, 2013

Press Releases

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Hodgson Russ Receives Top Tier National and Metropolitan Rankings in 2022 Best Law Firms Listings
Hodgson Russ Press Release, November 15, 2021

Three Hodgson Russ Attorneys Selected as Fellows of the Construction Lawyers Society of America
Hodgson Russ Press Release, September 19, 2018

Publications

COVID's Impact on Construction Duties Under the Lease: Lessons for the Future
Commercial Lease Law Insider, April 2021

Preparing Your Required Covid-19 Health and Safety Plan for An Energy Construction Business Reopening
Hodgson Russ Renewable Energy and Construction Alert, May 15, 2020

No-Damages-for-Delay Clauses and the COVID-19 Crisis
Hodgson Russ Construction Alert, April 9, 2020

New York State Passes \$3 Billion Act for Environmental Restoration and Protection – Next Stop, the Ballot Box
Hodgson Russ Environmental Alert, April 6, 2020

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New York State Exempts Municipal Construction From Blanket Ban, But Calls For Avoidance of Non-Essential Projects
Hodgson Russ Municipal Alert, March 30, 2020

New York Exempts School Construction Work From Shut Down Order, But Calls For Schools To Postpone Non-Essential Work
Hodgson Russ Education Alert, March 30, 2020

State Updates Construction Essential Work Guidance, Amends Single Employee Exemption
Hodgson Russ Construction Alert, March 27, 2020

OSHA'S Electronic Self-Reporting Requirement Provides Data Source For New Site Specific Targeting Inspection Program
OSHA Alert, December 20, 2018

Penalties for OSHA Non-Compliance Just Got Stiffer
Client Alert, August 8, 2016

The Nuts and Bolts of New York's Sales Tax Rules for Contractors
State Tax Notes, June 29, 2015

Presentations & Events

The 2021 AGC NYS/Posillico Civil Summer Meeting
August 7, 2021

Impacts of Marijuana in Construction
June 8, 2021

COVID-19 Testing and Vaccinations in Construction – What Contractors Need to Know
March 22, 2021

NYS Paid Sick Leave Law and Other Pandemic Leave Laws
October 28, 2020

2020 Construction Industry Conference
Schenectady, New York, February 4, 2020

Sales Tax for Construction
New York, New York, October 18, 2018

WSTBOA Educational Conference
Mayville, New York, September 11, 2018

New Administration, New Opportunities: Contracting for Public Works Stimulus Funds
Buffalo, NY, March 26, 2009