

Construction Law

Moss & Barnett advises on both public and private construction projects, from design and planning to contract negotiation, preparation, bidding and review, construction, surety/bond issues, and insurance coverage and claims. We handle jury trials, bench trials, arbitrations, and administrative trials to bring disputes to conclusion.

We counsel a full range of construction industry participants – including owners, architects, engineers, contractors, material suppliers, and subcontractors – on dispute avoidance and resolution as well as resolving issues with regulatory authorities, including OSHA and licensing boards.

Private Contract Negotiation

We help our clients understand and negotiate complex construction contracts, including issues regarding payment, insurance, indemnification, schedule, and claims.

Public Contract Procurement

Our lawyers counsel clients who are competitively bidding or responding to requests for proposals on public projects. We have successfully challenged public contract letting on competitively bid and “best value” procurements when the public authority did not follow the rules.

OSHA and Regulatory Citations

We defend clients facing citations from the U.S. Occupational Safety and Health Administration (OSHA), Minnesota OSHA, the U.S. Environmental Protection Agency (EPA), and state and local departments of health in addition to citations and fines levied by other government entities.

Construction Claims

We advise clients on properly documenting, defending, and making claims for delay, disruption, and extras.

Construction Defects

Our lawyers represent owners, design professionals, contractors, and subcontractors on construction defect claims, including both residential and commercial construction.

Mechanic's Liens and Payment Bond Claims

We help ensure that our clients will be paid for their work by filing and prosecuting mechanic's lien and payment bond claims. We also protect our owner clients from being forced to pay twice when a contractor or subcontractor defaults.

Experience

- **Payment claims by subcontractors following destruction of affordable housing project.** Assisting subcontractors in getting paid for their work that was performed on an affordable housing project that was destroyed during recent civil unrest in Minneapolis, Minnesota, and assisting on recovering extra costs during the project's rebuild.
- **Impact of COVID-19 on construction projects.** Assisting construction industry clients with all aspects of their business impacted by the COVID-19 pandemic. Just about every construction project is being disrupted by the pandemic. Material deliveries are delayed which, in turn, impacts construction progress. Some contractors have had crews missing because of exposures, illnesses, quarantines, and work stoppages. Any delay by a prior trade craft impacts the next trade craft.
- **Pausing of high profile construction projects during COVID-19.** Representing both an architectural firm and many contractors who are working on construction projects that were paused during the COVID-19 pandemic. Many project owners have temporarily stopped construction projects for unknown durations because of disruptions to financing or revenue/income reductions. The project owners have also "paused" paying contractors, so we are enforcing mechanic's lien, payment bond, and other payment rights and remedies.
- **Defending against OSHA citations.** Advising contractors and subcontractors in Minnesota, North Dakota, and elsewhere in defending against state and federal OSHA citations, including fatality and serious injury cases. We have obtained outright dismissal of OSHA citations in many cases.
- **Public contract bid protests.** Representing clients in numerous bid protests in Minnesota, North Dakota, and Wisconsin, including the largest successful bid protest in Minnesota history related to a light rail project. Our construction litigation team also recently convinced Hennepin County to withdraw an \$18 million award on a "best value" procurement based solely on our bid protest letter.
- **Construction defect claims.** Handled numerous construction defect claims, including obtaining an \$800,000 jury verdict for construction defects on a large Lake Minnetonka home.
- **Interstate 35W bridge collapse litigation.** Represented the Minnesota Department of Transportation, in association with the Minnesota Attorney General's Office, in litigation arising from the I-35W bridge collapse. We assisted in defending the state in the bridge collapse litigation as well as prosecuting the state's claims for reimbursement of amounts paid to settle claims.
- **\$10 million mechanic's lien and bankruptcy litigation.** Represented multiple clients who had not been paid an amount in excess of \$10 million with regard to an iron ore processing plant in



northern Minnesota in both mechanic's lien litigation and in the bankruptcy.

- **Multimillion-dollar claims in skyscraper office project.** Represented an LLC in both bringing and defending multimillion-dollar claims arising from a skyscraper office project in Milwaukee, Wisconsin.
- **Government relations and lobbying.** Represented the Minnesota Subcontractors Association (MSA) in lobbying the Minnesota Legislature to pass important legislation for the construction industry, including the "Contractor's Bill of Rights" and amendments to the Minnesota Anti-Indemnity Act.
- **Long-time representation of nonprofit organization.** Representing one of the nation's leading nonprofit organizations in numerous construction projects, including contract negotiation and dispute resolution.

Professionals

Madeline E. Davis

Aaron A. Dean

Kelly C. Engebretson

Sara E. Filo

Robert L. Schumann

Misty J. Tautges

Jeffrey A. Wieland

News

Aaron A. Dean Quoted: "Northern Minnesota city lands in contempt of court over bids for city garage"

Star Tribune, 03.31.2024

Aaron A. Dean Named to *Minnesota Lawyer's* "The POWER 30: Construction and Real Estate Law (2024)"

Minnesota Lawyer, 03.28.2024

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in *The Best Lawyers in America* and *Best Lawyers: Ones to Watch* for 2024

08.17.2023

Moss & Barnett Congratulates Our 2023 Minnesota *Super Lawyers* and *Rising Stars*

07.17.2023

Attorneys Debra M. Bulluck and Madeline E. Davis Join Moss & Barnett
02.24.2023

Moss & Barnett Announces New Shareholders: Michael T. Etmund, Mary Frances Price, and Jeffrey A. Wieland
02.22.2023

Aaron Dean Named as a 2022 "Attorney of the Year" by *Minnesota Lawyer*
Minnesota Lawyer, 02.16.2023

Moss & Barnett Congratulates Our 2022 Minnesota *Super Lawyers* and *Rising Stars*
07.18.2022

Contractor Wins Jury Trial Against County, as Public Owner, and Recovers Entire Contract Balance and Defeats Multi-Million Dollar Performance Bond Claim
05.23.2022

Attorneys Sara E. Filo and Katherine J. Marshall Join Moss & Barnett
03.15.2022

Moss & Barnett Congratulates Our Lawyers Selected for Inclusion in *The Best Lawyers in America* for 2022
The Best Lawyers in America, 08.19.2021

Moss & Barnett Congratulates Our 2021 Minnesota *Super Lawyers* and *Rising Stars*
07.20.2021

Aaron A. Dean Named to *Minnesota Lawyer's* "The Power 30: Real Estate and Construction Law"
06.28.2021

Moss & Barnett Announces New Shareholders: Kathy Y. Allen, Kelly C. Engebretson, Brittney M. Miller, John M. Schmid, and Alex R. Schoephoerster
01.20.2021

Moss & Barnett Congratulates Our Lawyers Listed to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2020
07.20.2020

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars" Lists for 2019
07.05.2019

Moss & Barnett's New Certified Paralegal, Misty J. Tautges
06.27.2019

Moss & Barnett Expands with Arrival of Craig A. Brandt, Peter J. Kaiser, and Jeffrey A. Wieland
04.18.2019

New Service Team Focuses on Construction Law
07.19.2018

Moss & Barnett Opens St. Cloud Office
07.09.2018

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2018
07.05.2018

Aaron A. Dean Receives Minnesota Subcontractors Association's 2017 "Champions Award"
03.09.2018

Aaron A. Dean Named Fellow of Construction Lawyers Society of America
09.12.2017

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2017
07.05.2017

Violating Safety Regulations Costs Minnesota Employers Millions in Steep Fines (Aaron A. Dean
quoted)
06.15.2017

Aaron A. Dean, Susan A. King, and Taylor D. Sztainer Elected Shareholders of Moss & Barnett
04.04.2017

Moss & Barnett is Pleased to Recognize the Following Team Members: Aaron A. Dean and Curtis D.
Smith
07.18.2016

Moss & Barnett Congratulates Its Lawyers Named to Minnesota "Super Lawyers" and "Rising Stars"
Lists for 2016
07.05.2016

Events

Safety Training
Northdale Construction Company, Inc., 9760 71st Street NE, Albertville, MN 55301, 04.03.2024

Changes to Construction Contracts
Webinar, 03.14.2024

OSHA Changes and Policy Updates that Impact Your Company
The Builders Group, 2919 Eagandale Boulevard, Suite 100, Eagan, MN 55121, 03.12.2024

MNOSHA Legislative Changes
Zoom Webinar (free), 12.14.2023

Legal Hot Topics: Permit Liability, Changing of the Guard and MnOSHA Legislative Changes and Enforcement Trends
2023 MN Asphalt Conference & Trade Show, Mystic Lake Event Center, 2400 Mystic Lake Blvd NW, Prior Lake, MN 55372, 12.14.2023

2023 MnOSHA Regulatory Changes — Lunch & Learn
The Builders Group, 2919 Eagandale Boulevard, Suite 100, Eagan, MN 55121, 12.12.2023

Aaron Dean Presents in Bismarck: Handling OSHA Inspections and How to Get Paid, Close Out Contracts, and Avoid Liquidated Damages
North Dakota Safety Council, 1710 Canary Avenue, Suite A, Bismarck, ND 58501, 06.21.2023

How to Get Paid, Close Out Contracts, and Avoid Liquidated Damages
DoubleTree by Hilton 825 East Beaton Drive, West Fargo, ND 58078, 04.25.2023

Safety Training
Minger Construction, 620 Corporate Dr, Jordan, MN 55352, 04.17.2023

Aaron A. Dean and Moss & Barnett are Pleased to be a Silver Sponsor of and Presenter at the 2023 Northwest Chapter of the American Society of Safety Professionals (ASSP) Professional Development Conference
2023 ASSP Northwest Chapter PDC, The Builders Group, 2919 Eagandale Boulevard, Eagan, MN 55121, 04.04.2023

Handling OSHA Inspections Lunch and Learn
In-Person Seminar Sponsored by Associated Builders & Contractors (ABC) of Minnesota/North Dakota to be held at Border States Electric, 605 25th Street South, Fargo, ND 58103, 04.03.2023

How to Get Paid, Close Out Contracts, and Avoid Liquidated Damages
Minnesota Mechanical Contractors Association (MMCA) Webinar, 03.21.2023

Handling OSHA Inspections
Minnesota Utility Contractors Association (MUCA) Leadership Series – Spring Session to be held at The Builders Group, 2919 Eagandale Boulevard, Suite 100, Eagan, MN 55121, 03.16.2023

How to Get Paid, Close Out Contracts, and Avoid Liquidated Damages
Associated Builders and Contractors (ABC) Minnesota/North Dakota Chapter Webinar, 03.02.2023

How to Avoid Mistakes that Make Contractors Go Out of Business and Get Paid for Your Work
In-person Seminar Jointly Sponsored by Associated Builders & Contractors (ABC) of Minnesota/North Dakota and the Construction Financial Management Association to be held at Eide Bailly LLP, 4310 17th Avenue South, Fargo, ND 58103, 03.01.2023

Handling OSHA Inspections

Associated Builders & Contractors (ABC) Minnesota/North Dakota Chapter Webinar, 02.02.2023

Handling OSHA Inspections

Minnesota Utility Contractors Association Leadership Series – Winter Session, UEL Conference Center, 1000 Westgate Drive, St. Paul, Minnesota, 03.24.2022

Collecting Change Orders and Contract Balances and Current Construction Law Issues

Sponsored by a national surety and insurance agency, 03.17.2022

OSHA Investigations & Responding to Citations

Mahowald Webinar, 08.23.2021

Handling OSHA Inspections

Minnesota Utility Contractors Association Zoom Webinar, 05.17.2021

How to Get Paid for Your Company's Work

Seminar training to mechanical contractors from Minnesota, Wisconsin, Illinois, and Nebraska who are members of a Multi-Association Alliance for Mechanical Subcontractors delivered via Zoom, 04.22.2021

OSHA Shows Up On the Job Site – What Is Next?

Minnesota Subcontractors Association, 04.15.2021

Avoiding Common Mistakes Contractors Make

Associated Builders & Contractors (ABC) Minnesota/North Dakota Chapter GoToMeeting, 10.29.2020

How to Prevent Contractors from Going Out of Business

Management Guidance seminar to multiple trade groups delivered via Zoom, 04.24.2020

Part II – Avoiding Common Mistakes that Contractors Make – Webinar

Associated Builders & Contractors (ABC) Webinar, 04.22.2020

Contracts and Change Order Training

Seminar to national trade subcontractor and seminar training delivered via Zoom, 04.16.2020

Avoiding Common Mistakes that Contractors Make – Webinar

ABC of MN/ND seminar delivered via Zoom, 04.14.2020

Bid Terms and Conditions and Modifying Construction Contracts

Seminar to national trade subcontractor and seminar training delivered via Zoom, 04.10.2020

Dealing with OSHA

Minnesota Mechanical Contractors Association, 10590 Wayzata Boulevard, Suite 100, Minnesota, MN 55305, 04.09.2020



How to Get Paid

Private in-house seminar for several glass companies, 03.26.2020

How to Get Paid

Minnesota Mechanical Contractors Association, 10590 Wayzata Boulevard, Suite 100, Minneapolis, MN 55305, 03.25.2020

Minnesota and North Dakota Construction Law

Fargo, ND, 03.24.2020

Lunch 'n' Learn: How to Avoid Going Out of Business

ABC of MN/ND Lunch 'n' Learn, Comstock Construction, 4511 15th Avenue North, Fargo, ND 58102, 03.10.2020

Lunch 'n' Learn: How to Avoid Going Out of Business

ABC of MN/ND Lunch 'n' Learn, Mankato, MN, 03.05.2020

Lunch 'n' Learn: How to Avoid Going Out of Business

ABC of MN/ND Lunch 'n' Learn, Moss & Barnett St. Cloud Office, 3800 Eighth Street North, St. Cloud, MN 56303, 03.03.2020

How to Avoid Going Out of Business – Breakfast Seminar

ABC of MN/ND, 10193 Crosstown Circle, Eden Prairie, MN 55344, 03.03.2020

How to Avoid Going Out of Business

ABC of MN/ND Lunch 'n' Learn, Bilfinger Westcon, 7401 Yukon Drive, Bismarck, ND 58503, 02.25.2020

How to Get Paid

Minnesota Mechanical Contractors Association, 10590 Wayzata Boulevard, Suite 100, Minneapolis, MN 55305, 02.06.2020

Safety Director Liability & OSHA

The Builders Group, 2919 Eagandale Boulevard, Suite 100, Eagan, MN, 12.10.2019

How to Modify Construction Contracts

Rochester Golf and Country Club, 3100 Country Club Road SW, Rochester, MN 55902, 09.10.2019

Year In Review for OSHA Citations and Cases Defended

Twin Cities, MN, 09.10.2019

Practical Perspectives on Minnesota OSHA Disputes

Seattle Room / Dorsey & Whitney LLP, 50 South Sixth Street, Suite 1500, Minneapolis, MN 55402, 06.21.2019

Risk Management and Contracts

The Builders Group, 2919 Eagandale Boulevard, Suite 100, Eagan, MN 55121-1214, 05.14.2019

Changes to Construction Contracts

Minnesota Mechanical Contractors Association, 10590 Wayzata Boulevard Suite 100, Minneapolis, MN, 04.11.2019

What Happens When OSHA Arrives?

ACME Tools, 1101 North Washington Street, Grand Forks, ND, 04.09.2019

When OSHA Comes A-Knockin'

ABC 2019 Safety & Construction Conference, 03.13.2019

When OSHA Comes A-Knockin'

St. Cloud River's Edge Convention Center 10 4th Ave South, St. Cloud, MN 56301, 03.01.2019

Important Construction Contract Terms

San Antonio, Texas, 02.28.2019

What Happens When OSHA Arrives?

Bilfinger Westcon, Inc., 7401 Yukon Drive, Bismarck, ND 58502, 02.19.2019

Handling OSHA Inspections in 2019

Mystic Lake Center, 2400 Mystic Lake Blvd NW, Prior Lake, MN, 02.12.2019

Handling a Serious Injury Case

Minneapolis Marriott Northwest, 7025 Northland Drive North, Brooklyn Park, MN 55428, 02.07.2019

Subcontractors Perspective: The Value of Collaborating with General Contractors and Developers

Golden Valley Country Club, 7001 Golden Valley Road, Golden Valley, MN 55427, 01.31.2019

Dealing with OSHA

Minnesota Mechanical Contractors Association, 10590 Wayzata Boulevard Suite 100, Minneapolis, MN, 01.22.2019

How to Get Paid

Associated Builders and Contractors of MN/ND Breakfast & Learn, Holiday Inn of Fargo, 3803 13th Avenue South, Fargo, ND, 01.15.2019

Lien Law

5th Annual ABC & CFMA Construction Management Regional Conference, DoubleTree by Hilton, 825 East Beaton Drive, West Fargo, ND 58078, 11.13.2018

Your Safety Record Impacts Contracting Opportunities

Associated General Contractors of Minnesota Safety & Health Committee Meeting, 525 Park Street, #110, St. Paul, MN 55103, 05.10.2018

How to Get Paid

Associated Builders & Contractors Lunch 'n' Learn, Comfort Inn & Suites-Mandan, 1516 27th St NW, Mandan, ND 58554., 04.18.2018

OSHA on the Jobsite

Associated Builders and Contractors, Inc.'s 2018 Safety & Construction Conference, St. Cloud River's Edge Convention Center, 10 Fourth Avenue South, St. Cloud, MN 56301, 03.02.2018

Aaron A. Dean and Moss & Barnett are Pleased to be Program Sponsor of ABC's 2018 Safety & Construction Conference

Associated Builders and Contractors, Inc.'s 2018 Safety & Construction Conference, St. Cloud River's Edge Convention Center, 10 Fourth Avenue South, St. Cloud, MN 56301, 03.02.2018

"How to Get Paid" Mechanic's lien and payment bond rights for contractors/subcontractors
Dakota Chapter of Construction Financial Management Association (CFMA), Doubletree, 825 East Beaton Drive, West Fargo, ND, 02.27.2018

Construction Law Landscape

Golden Valley Country Club 7001 Golden Valley Road Golden Valley, MN 55427, 02.06.2018

Protecting Your Company's Safety Record

2018 Minnesota Construction Summit, Minneapolis Convention Center, Minneapolis, MN, 01.09.2018

Four Ways to Modify a Contract

Minnesota Subcontractors Association, Midland Hills Country Club, 2001 Fulham Street, Roseville, MN, 01.09.2018

OSHA Is On-Site: Now What

Twin City Roofing Contractors Association and SMARCA, Radisson Hotel Minneapolis/St. Paul North, 2540 Cleveland Avenue, Roseville, MN 55113, 10.04.2017

Handling a Serious Injury Case

Marsh and McLennan Agency 7225 Northland Drive North, Suite 300 Brooklyn Park, MN 55428, 05.10.2017

How to Handle OSHA Investigations

Lametti & Sons, Inc. Annual Safety Day, 04.28.2017

Negotiating Construction Contracts

Minnesota Subcontractors Association, Midland Hills Country Club, 2001 Fulham Street, Roseville, MN, 04.11.2017

Aaron A. Dean and Moss & Barnett Sponsor Minnesota Subcontractors Association's "Construction Technology Showcase"

Midland Hills Country Club, 2001 Fulham Street, Roseville, MN, 03.14.2017



Retainage Law and Legislative Update: 2016 and Beyond

Minnesota Plumbing-Heating-Cooling Contractors Association 121st Annual Convention & Vendor Show, Minneapolis Marriott Northwest, Brooklyn Park, MN, 02.09.2017

Aaron A. Dean and Moss & Barnett – Bronze Sponsor of 3rd Annual ND ABC/CFMA Conference
Cambria Hotel & Suites, 825 East Beaton Drive, West Fargo, ND 58078, 11.17.2016

Subcontractors Perspective

Real Estate & Construction Contractors Summit, "Building Relationships Not Just Projects," Golden Valley Country Club, 701 Golden Valley Road, Golden Valley, MN 55427, 09.23.2016

Legislative Update: 2016 and Beyond

9th Annual MNCPA Construction Conference, Crowne Plaza Minneapolis West, 3131 Campus Drive, Plymouth, MN 55441, 09.19.2016

My Contract Says What?

9th Annual MNCPA Construction Conference, Crowne Plaza Minneapolis West, 3131 Campus Drive, Plymouth, MN 55441, 09.19.2016

Aaron A. Dean and Moss & Barnett - Bronze Sponsor of 9th Annual MNCPA Construction Conference

9th Annual MNCPA Construction Conference, Crowne Plaza Minneapolis West, 3131 Campus Drive, Plymouth, MN 55441, 09.19.2016

Training Your Employees to Handle an OSHA Inspection

Presentation to 40+ representatives of general contractors, North Dakota State College of Science campus location, Fargo, ND. Contact Aaron to learn more., 05.27.2016

Ask the Attorney: What to Do When My Contract Says What?

Presentation to subcontractor trade association and its members, Grumpy's Bar & Grill, Roseville, MN. Contact Aaron to learn more., 05.19.2016

To Appeal or Not to Appeal: That is the Question

2016 Appellate Practice Institute, 600 Nicollet Mall, Suite 370, Third Floor City, Center, Minneapolis, MN 55402, 03.18.2016

Retainage Reform During the 2016 Legislative Session

Sponsored by the Minnesota Subcontractors Association, St. Paul, MN, 02.16.2016

Professional Liability for Safety Professionals

American Society of Safety Engineers Northwest Chapter, 2016 Annual Professional Development Conference, The Commons Hotel, 615 Washington Avenue SE, Minneapolis, MN, 02.09.2016

Responsible Contractor Act

Sponsored by Minnesota Contractor Trade Organization, Las Vegas, NV, 02.06.2016



How to Get Paid Early and in Full

Sponsored by Minnesota Contractor Trade Organization, Las Vegas, NV, 02.05.2016

What to Do When the Contract Documents You Receive Post-Bid Are Different than Your Bid

Sponsored by Minnesota Contractor Trade Organization, Las Vegas, NV, 02.05.2016

New Responsible Contractor Act

Sponsored by AGC, MMCA, NECA, and other contractor trade groups, Roseville Radisson, 2540 North Cleveland Avenue, Roseville, MN 55112, 01.26.2016

Understanding Minnesota Construction Law

Minnesota Subcontractors Association, 11.10.2015

Protecting Your Company's Safety Record

American Society of Safety Engineers, Northwest Chapter, Roseville, MN, 10.13.2015

How to Get Paid

Sponsored by national contractor trade group, Moorhead, MN. Contact Aaron to learn more., 10.12.2015

Contract Documents – Instructor

Associated General Contractors Supervisory Training Program (Fall 2015), 10.01.2015

Real Estate & Construction Contractors Summit

Sponsored by the Minnesota Real Estate Journal in conjunction with The Associated General Contractors of America (AGC) and the Minnesota Subcontractors Association (MSA), Golden Valley Country Club, 7001 Golden Valley Road, Golden Valley, MN, 09.25.2015

Minnesota's New Responsible Contractor Statute

Sponsored by national contractor/accounting trade association, Moorhead, MN. Contact Aaron to learn more., 03.17.2015

Handling OSHA Citations & Investigation

Sponsored by Minnesota Subcontractors Association, Midland Hills Country Club, 2001 Fulham Street, Roseville, MN, 03.10.2015

Training Your Employees to Handle OSHA Inspections

Sponsored by national contractor trade association, St. Cloud, MN. Contact Aaron to learn more., 02.27.2015

OSHA Audits & How to Defend Against A Citation

Marsh & McLennan Agency, 7225 Northland Drive, Minneapolis, MN 55428, 02.19.2015

Contractual Indemnity

Seminar sponsored by multiple trade associations, Radisson Roseville Hotel, Roseville, MN. Contact Aaron to learn more., 02.12.2015

MSA in Action: Legislative Update Seminar

Sponsored by Minnesota Subcontractors Association, Midland Hills Country Club, 2001 Fulham Street, Roseville, MN, 02.10.2015

Minnesota's New (2013) Indemnity Statute and Its Future

Associated Builders & Contractors of ND & MN, Fargo, ND, 02.04.2015

Responding to OSHA and Defending OSHA Citations

Sponsored by multiple trade associations, Radisson Roseville Hotel, Roseville, MN, 01.29.2015

Troublesome Contract Clauses

Seminar sponsored by national surety broker and CliftonLarsonAllen LLP, 01.20.2015

Minnesota's New "Responsible Contractor" Act

Seminar sponsored by national surety broker and CliftonLarsonAllen LLP, 01.20.2015

Publications

Contractual Notice Provisions: Why Timing Is Everything

Moss & Barnett Advocate (Spring 2022 edition), 05.13.2022

Handy at Bandy – Kelly Engebretson Keeps it Cool on the Ice

Minnesota Super Lawyers Magazine 2021, 07.22.2021

The Lingering Effects of COVID in Construction

Moss & Barnett Advocate (Spring 2021 edition), 05.26.2021

To Arbitrate or Litigate?

Moss & Barnett Advocate (Winter 2021 edition), 02.25.2021

Demand For Commercial Office Space Is Changing But Offices Are Not Obsolete

Moss & Barnett Advocate (Winter 2021 edition), 02.25.2021

The Poison Pill in North Dakota's Mechanic's Lien Law

Moss & Barnett Advocate (Summer 2020 edition), 09.02.2020

Hurry Up Faster on Bid Protests

Moss & Barnett Advocate (Fall 2019 edition), 12.16.2019

Consumer Attorneys Target Filers of Mechanic's Liens: How to Avoid Getting Sued

Summer 2017 Firm Newsletter, 08.21.2017

What the New 2016 Retainage Law Means to Subcontractors

*Minnesota Subcontractors Association Website**, 06.22.2016

The 1-35 Bridge Construction Project: A Case Study in Minnesota Bid Protests

Minnesota Continuing Legal Education (2011 and 2012), 2012

Arbitrating Mechanic's Lien Claims

Minnesota State Bar Association Continuing Legal Education (2009), 2009

Considerations in Hiring A Contractor

June 2008, 06.02.2008

A Critique of Best Value Contracting in Minnesota

34 William Mitchell Law Review 25 (2007), 2007

Contractor Wins Jury Trial Against Faribault County, as Public Owner, and Recovers Entire Contract Balance and Defeats Multi-Million Dollar Performance Bond Claim

On May 5, 2022, Moss & Barnett client, Northern Lines Contracting, Inc. (Contractor), secured a jury verdict from a Faribault County jury in its favor to recover every penny of every dollar sought in a multi-year dispute with Faribault County (County), as public owner. At trial, Contractor also defeated a \$3.0+ Million performance bond claim brought by the County. Moss & Barnett congratulates Northern Lines Contracting, Inc. for this jury verdict result, and also congratulates Aaron Dean and Jeff Wieland, co-chairs of Moss & Barnett 's Construction Law team, who handled the case on behalf of Contractor.

The jury verdict was issued five years to the day from Contractor's submission of its \$2.866 Bid Proposal to the County, as public owner, under a unit price contract to construct a drainage system comprised of more than 33,000 linear feet of drain tile at various depths and excavating more than 228,000 cubic yards of soil to construct a trapezoidal ditch to drain water from farmers' fields in and near Blue Earth, Minnesota. The drainage ditch project was designed by an Engineering Firm hired by the County, and the County's Engineering Firm and County Drainage Authority Manager administered the construction contract performed by Contractor.

On December 23, 2018, Contractor achieved Substantial Completion of the drainage project. Moss & Barnett was involved with ensuring Contractor was paid in 2018 during the construction project, objecting to several punch lists in 2018, and obtaining the Certificate of Substantial Completion in order for the Contractor to avoid \$2,500 per day liquidated damages starting January 1, 2019.

After Substantial Completion was achieved, the County and its Engineer issued additional punch lists and demanded that Contractor perform out-of-scope work without paying the Contractor for the extra work. After Substantial Completion was achieved, the County and its Engineer asserted claims against the Contractor that the Contractor's work caused farmers' fields to flood. The County refused to pay an approximate \$398,000 Contract Balance to Contractor.

At trial, Contractor showed that the County demanded Contractor perform "punch list" work that was identical to flooding conditions that the County sought FEMA federal disaster relief funding as a result of torrential storms in June 2018 during the middle of the construction project.

After not paying Contractor in full, the County terminated Contractor, the County asserted a Performance Bond claim, the County spent almost \$2.0 Million to rip out and replace Contractor's work, and the County alleged that it was entitled to more than \$3.0 Million under its Performance Bond claim.

A jury trial commenced on April 19, 2022. The focal points of the trial were establishing that Contractor completed all work in accord with the County's design and explaining that there were flaws in the County's drainage system design. Contractor alleged that the County impliedly warranted the adequacy of the design and that if the design was deficient, then Contractor was not responsible pursuant to the doctrine established by the United States Supreme Court in *United States v. Spearin*, 248 U.S. 132 (1918).

After seven days of testimony, with about 20 witnesses and approximately 200 exhibits, the jury hearing the case reached a verdict that the County breached its contract with Contractor causing \$397,987 of damages, which was the total amount of dollars sought by Contractor, and that the County had the obligation to pay Contractor on January 25, 2019. The jury also rejected \$2,662,000 of the County's alleged damages, and the County's Performance Bond claim was dismissed. Contractor is now seeking 18% interest, plus costs, and a net judgment in favor of Contractor. As a result of the jury verdict, Contractor will be able to use the trial's judicial findings to explain to other public owners that the County's termination of Contractor was wrongful.

Bottom Line: Contractors who need help enforcing their contract and statutory payment remedies should contact Moss & Barnett construction law lawyers Aaron Dean and Jeff Wieland.

Aaron Dean and Jeff Wieland outside the Faribault County Courthouse holding the jury verdict

(Photo Courtesy of *Faribault County Register*)

Clients

While we primarily represent large and small contractors, suppliers, and subcontractors, we also represent private owners and design professionals, which gives us a broad perspective on the construction industry. We serve construction law clients throughout Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa.

General Contractors. We represent large and small general contractors with respect to both commercial and residential construction. Our clients include vertical (building) and horizontal (bridges and roads) contractors who perform both public and private construction. We advise on contract negotiation, claim prosecution and defense, and payment disputes.

Subcontractors. We represent subcontractors from all trades and of all sizes in contract negotiations, insurance coverage issues, claim prosecution, and payment disputes.

Suppliers. Material suppliers have unique needs and problems. We advise suppliers on how to protect their payment rights and address their unique insurance and liability issues.

Owners. We advise owners of all sizes – from families looking to construct their dream home to large, institutional property owners and developers across a full range of industries. We provide counsel regarding contract provisions, payment procedures, quality assurance, and schedule and defect claims to assure they get everything for which they paid. We do not represent public owners.

Design Professionals. We understand the unique role the design professional plays in a construction project, whether it is a traditional design-bid-build or a design-build project. We counsel design professionals regarding the unique and demanding contract requirements they encounter in contracts with owners and design-builders. We represent them in negotiating contract requirements and, when necessary, defend claims made against them.

