



Aaron A. Dean

Attorney

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PRACTICE AREAS: Construction Law, Litigation

Aaron's almost 30-year legal career spans all facets of the construction industry. In his contractor-side construction law practice, he represents general contractors, subcontractors, and suppliers. In his role as legal advisor, Aaron has formed long-term partnerships with contractors, subcontractors, suppliers, owners, design professionals, and lenders.

Aaron's areas of focus include:

- Defending construction defect claims
- Assisting to close out contracts
- Prosecuting payment claims via change orders, claims, and statutory claims for mechanic's liens, payment bonds, and prompt payment
- Contract drafting and negotiations for contractors
- Obtaining insurance coverage for contractors
- Bidding disputes and bid mistakes
- Bid protests on government contracts, both competitively bid projects and "best value" projects
- Regulatory compliance for contractors, including handling investigations by the federal and state governments
- Defending OSHA citations, MSHA citations, EPA citations, Department of Health citations, and citations/fines issued by other governmental regulators
- Defending or pursuing False Claims Act claims
- DBE enforcement

Aaron has handled more than 100 OSHA investigations and cases for contractors in Minnesota, Iowa, North Dakota, and Colorado.

He is a sought-after construction industry thought leader, speaking frequently at key trade events on timely construction topics and serving as an instructor for national and local contractor trade groups.

Prior to practicing law, Aaron was a law clerk for the Honorable David S. Doty and the Honorable James M. Rosenbaum, both U.S. district court judges for the District of Minnesota.

Experience

Procurement

- Represented contractors in dozens of bid protests in Minnesota, North Dakota, and Wisconsin. Represented contractors and government vendors in administrative and judicial protests on competitive bid and “best value” procurements.
- *Raytheon, Ames, Kraemer v. MnDOT*. Represented contractor joint venture in the largest successful bid protest in Minnesota history related to the Hiawatha Light Rail project.
- Represented DBE Contractor in an administrative contested case hearing following MnDOT's first-ever attempt to decertify a DBE company. Stopped decertification.
- Represented contractors in bid mistake cases to seek relief from contract awards and obtain the return of bid bonds.

Mechanic's Lien Foreclosure

- Foreclosed hundreds of mechanic's liens on commercial and residential projects in Minnesota, Wisconsin, and North Dakota.
- *McCarron's Building Center v. Titus Construction, Inc.*, A09-1571 (Minn. Ct. App., June 15, 2010) (unpublished). Represented lumber supplier on appeal. Established priority of lumber supplier's mechanic's lien over bank's mortgage and allowed lumber supplier's blanket lien to be foreclosed on less than all condominium units without apportionment.
- *Eischen Cabinet v. Dan Happe Construction, et al.*, A08-1016 (Minn. Ct. App., May 19, 2009) (unpublished). Represented material supplier. Affirmed judgment in favor of mechanic's lien claimants and against lender regarding priority of various claims.
- *Stiglich Construction, Inc. v. Larson*, 621 N.W.2d 801 (Minn. Ct. App. 2001). Represented contractor on appeal. Contractor did not waive right to seek attorneys' fees by prosecuting mechanic's lien and breach of contract claims in arbitration.
- *Woodside 5 Partnership, LLC, et al. v. Interspace-West, Inc., et al.*, Court File No. AC99-14328 (Hon. Cara Lee Neville). Represented building owner. Obtained dismissal of mechanic's liens for failing to provide lienable services and intentionally overstating lien amounts.

Construction Defect

- Defended construction defect claims asserted against general contractors, subcontractors, building materials suppliers, and window suppliers.

- *Washington County v. Knutson Construction Services* Washington Cty. Dist. Ct.). Complete dismissal of county's \$2+ million claim for alleged defects to repair the county's Law Enforcement Center.
- Represented window supplier since 2000, including defense of construction defect and mold claims.

Transportation and Utility

- Represented road and underground utility general contractors in disputes with public owners and developers, including prosecuting claims for differing site conditions and disputed change orders, defending termination claims, back charges, offsets, and deductive change order claims.

OSHA Defense Work

- Defended general contractors and subcontractors in more than 300 federal OSHA, MNOSHA, and other State Plan cases in 22 States, including more than 30 fatality cases, multiple serious injury and amputation cases, and scores of non-injury cases.
- *Commissioner v. Acoustics Associates, Inc.* (2021). Represented specialty subcontractor and obtained dismissal of fatality Citation issued under the General Duty Clause.
- Following construction site fatalities, handled multiple Federal OSHA investigations in 2019 and 2020 resulting in no Citation being issued to contractor clients in North Dakota and Wisconsin.
- In 2020 and 2021, obtained complete vacates of Citations issued by Federal OSHA, MnOSHA, and other State Plans in injury and non-injury cases for excavation and fall protection cases.
- *Commissioner v. John A. Dalsin & Son, Inc.* (2017). Represented roofing subcontractor at trial. Complete dismissal of Citation.
- *Commissioner v. Lametti & Sons, Inc.* (2014). Represented underground utility contractor. Obtained complete dismissal of MNOSHA Citations issued to contractor. Administrative law judge issued an order dismissing MNOSHA's complaint with prejudice, dismissing MNOSHA Citations in their entirety, and vacating all fines issued to a contractor; also issued pre-trial ruling dismissing all claims against the contractor.
- *Commissioner v. Michels Pipeline*, Dockets 8389 and 8640 (2009). Obtained dismissal of Citations issued by MNOSHA following administrative contested case hearing based on employee misconduct defense. Dismissal of Citations affirmed on appeal. *MNOSHA v. Michels Pipeline*, 2010 WL 4679836 (Minnesota Office of Administrative Hearings, October 18, 2010).
- *Secretary of Labor v. Q3 Contracting, Inc.* Obtained dismissal of federal OSHA Citations on appeal following contested case hearing in Colorado.
- Obtained complete dismissal of fatality Citation for roofing subcontractor.
- Obtained complete dismissal of "repeat" level fall protection Citation issued to general contractor/developer for safety violations committed by framing subcontractor.

- Obtained severity level reductions and dismissals of Willful level Citations.
- Obtained complete dismissal of Citations issued to general contractors under the Multi-Employer Doctrine.
- Obtained dismissal of multiple Citations issued by Federal OSHA and multiple State Plans to temporary labor/staffing company at manufacturing facilities, where more than 1,000 temporary employees were working during an almost two-year lockout and in other long term lockouts.

Project Counseling and Dispute Mitigation

- Counseled construction industry clients to help manage risks and try to avoid disputes while construction contracts were being performed.

Contract Drafting and Negotiations

- Drafted and negotiated construction contracts, change orders, and settlement agreements for clients working on construction projects.

Appellate Work

- Represented contractors and material suppliers on appeal after replacing their district court counsel.
- *Contractors Edge, Inc. v. City of Mankato*, A11-916 (Minn. Ct. App., Jan. 17, 2012) (unpublished), *denied*(Minn., March 28, 2012). Represented contractor on appeal from summary judgment obtained by defendant municipality in district court.
- *McCarron's Building Center v. Titus Construction, Inc.*, A09-1571 (Minn. Ct. App., June 15, 2010) (unpublished). Represented lumber supplier on appeal and reversed district court ruling against building supplier.

Alternative Dispute Resolution

- Mediated (as counsel for a party) more than 150 construction cases.
- Represented public owners, general contractors, and subcontractors in binding arbitrations. Served as an arbitrator or represented parties in more than 40 arbitrations.

Defense of Contractor Payment Claims

- *Kraus-Anderson v. City of Chanhassen*(Carver Cty. Dist. Ct., 2006). Bench trial. Successful defense of 98+ percent of contractor's claims against the city related to construction of a \$5.1 million public library. De minimis award below settlement offer.

Education

William Mitchell College of Law, St. J.D.; *summa cum laude*

Lafayette College, Easton, PA, B.A.

Admissions

Minnesota

North Dakota

Wisconsin

U.S. District Court for the District of Minnesota

U.S. Court of Appeals for the Eighth Circuit

Honors & Recognitions

Minnesota Super Lawyers (2003-2006, 2008-present)

Chartered Fellow, Construction Lawyers Society of America (2017-present)

The POWER 30: Construction and Real Estate Law, *Minnesota Lawyer* (2021 and 2024)

Attorney of the Year, *Minnesota Lawyer* (2022)

Order of Maximus (100 or more cases tried to verdict, bench ruling, or arbitrated to decision),
Construction Lawyers Society of America (2021)

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 2023 *Minnesota Super Lawyers* and *Rising Stars*
07.17.2023

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

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

Court Operations Update
Moss & Barnett Advocate (Spring 2021 edition), 05.26.2021

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

New Service Team Focuses on Construction Law
07.19.2018

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

Aaron A. Dean Joins Moss & Barnett
02.05.2015

Speaking Engagements

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

OSHA Update

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

What the New 2016 Retainage Law Means to Subcontractors
*Minnesota Subcontractors Association Website**, 06.22.2016

Professional Associations

President (2014-2016), Member, Government Affairs Committee (2014-2015) Board member (2008-2015) Vice president (2013-2014) Treasurer (2012-2013) – Minnesota Subcontractors Association

Member, Board of Directors, Construction Financial Management (2013-2016)

Instructor of Supervisory Training Program (2014-2015) – Associated General Contractors of Minnesota

Safety Committee member, Associated Builders & Contractors Inc. Minnesota/North Dakota Chapter (2013-2015)

SMARCA of Minnesota North & South Dakota Inc.

Minnesota Asphalt Pavement Association

American Bar Association

Federal Bar Association

Council member (2013-2016), Chair (2011-2012), Vice-chair (2010-2011), Treasurer (2009-2010), Secretary (2008-2009) – Minnesota State Bar Association – Construction Law Section

ABA Forum on the Construction Industry

Member, Diversity Law Institute (2017-present)

Member, Trial Law Institute (2017-present)

Board Memberships

Former board member, Minnesota Board, American Subcontractors Association (2008-2012)

Alumni Board, William Mitchell College of Law (2003-2008)

Contractor Wins Jury Trial Against 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 an approximate \$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 daily 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 Contractor for the extra work. After Substantial Completion was achieved, the County and its Engineer asserted claims against 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 alleged "punch list" work to repair damaged areas of the project even though the County had sought FEMA federal disaster relief funding to repair these same areas following torrential storms in June 2018 during the middle of the construction project. The County told Contractor that Contractor's work was deficient in these areas while at the same time telling the federal government that storms damaged these areas.

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 to make improvements (i.e., betterments) that Contractor was not hired to construct, and the County alleged that it was entitled to more than \$3.0 Million under its Performance Bond claim. Contractor's owner would be personally liable for any amounts obtained by the County on a Performance Bond claim, so the jury trial carried extra importance to Contractor and its owner.



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, and 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 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. Before submission of the case to the jury, the County dismissed its negligence claim against Contractor. 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 at [Aaron.Dean@lawmoss.com](mailto:Dean@lawmoss.com) and Jeff Wieland at Jeff.Wieland@lawmoss.com.

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

(Photo Courtesy of *Faribault County Register*)

