



## Jeffrey A. Wieland

Attorney

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### **PRACTICE AREAS:** Construction Law, Litigation

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Jeff practices in construction, commercial, and public procurement litigation. He advocates for and advises clients in all phases of a dispute, from pre-litigation claim and risk analysis through resolution of the case at trial, arbitration, mediation, or appeal. He also advises clients on how to avoid litigation, which often involves drafting and reviewing contracts and negotiating agreements and settlements.

Jeff's engineering and project management background gives him a perspective unusual among construction lawyers. Having experienced firsthand many of the difficulties that his clients face – notably, delivering projects on budget, on schedule, and within specifications – Jeff can ably navigate both sides of the table.

### **Experience**

- Represented the Taxpayers League of Minnesota in its lawsuit seeking to enjoin the city of St. Paul from awarding the design-build contract for the new St. Paul Saints stadium without engaging in competitive bidding. See *Taxpayers League of Minnesota v. City of St. Paul*, 62-CV-12-7982. The city reversed its position and engaged in competitive bidding after the filing of a temporary restraining order motion.
- Represented the disappointed bidder on an \$8 million public construction contract in an administrative protest, district court lawsuit, and appeal. See *Rochon Corp. v. City of St. Paul*, 814 N.W.2d 365 (Minn. Ct. App. 2012).
- Represented the taxpayers challenging the Minnesota Department of Transportation's implementation of the MnDOT best-value design-build statute on the 35W replacement bridge procurement. See *Sayer v. Minn. Dept. of Transportation*, 790 N.W.2d 151 (Minn. 2010).
- Represented the owner of a North Dakota ethanol plant in a dispute with the plant's design builder.
- Represented a Nebraska steel erection company in an arbitration against a Japanese design builder in a dispute arising from an Iowa coal-fired power plant construction project.



- Represented the general contractor that built the Microsoft campus in Fargo in a dispute with a subcontractor. This case involved litigation in the federal district court (see *Fergus Drywall, Inc. v. J.E. Dunn Construction Co.*, 3:11-CV-11) and an arbitration in North Dakota.
- Represented the owners of a car dealership in an arbitration and a separate mechanic's lien foreclosure lawsuit with the project's design builder.
- Represented a national lumberyard company in over a dozen breach of contract and mechanic's lien lawsuits. All cases were either settled or prosecuted to judgment.
- Represented a North Dakota and Minnesota contractor in contract and payment disputes with the North Dakota Department of Transportation.
- Represented a real estate developer in a commercial lease dispute with a tenant.
- Represented a general contractor in a baseball arbitration and subsequent Prompt Payment Act lawsuit against the Minnesota Department of Transportation.
- Represented contractors in bid protests in various jurisdictions including Arizona, North Dakota, South Dakota, and Minnesota.

## Education

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

University of Texas at Arlington, M.Eng., Mechanical Engineering

University of Colorado at Boulder, B.S., Engineering Physics

## Admissions

Minnesota

North Dakota

U.S. District Court for the District of Colorado

U.S. District Court for the District of Minnesota

U.S. District Court for the District of North Dakota

U.S. District Court for the Western District of Wisconsin

U.S. Court of Appeals for the Eighth Circuit

U.S. Court of Federal Claims



## Honors & Recognitions

*Minnesota Rising Stars* (2010, 2015, 2016)

## News

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

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

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

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

## Speaking Engagements

Avoiding Common Mistakes that Contractors Make – Webinar  
ABC of MN/ND seminar delivered via Zoom, 04.14.2020

## Publications

Contractual Notice Provisions: Why Timing Is Everything  
*Moss & Barnett Advocate (Spring 2022 edition)*, 05.13.2022

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

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

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*

A Critique of Best Value Contracting in Minnesota

*34 William Mitchell Law Review 25 (2007), 2007*

## Professional Associations

Member, Minnesota State Bar Association – Construction Law Section Governing Council  
(2012-2018)

## Community Involvement

Parent volunteer, The Blake School

## 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 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:Aaron.Dean@lawmoss.com) and Jeff Wieland at [Jeff.Wieland@lawmoss.com](mailto:Jeff.Wieland@lawmoss.com).***

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

(Photo Courtesy of *Faribault County Register*)