

Daniel B. Swaja

Partner

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Services

Class Action Defense
Complex Commercial Litigation
Construction & Infrastructure
Construction Litigation
Litigation

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Construction & Infrastructure



Daniel Swaja devotes 100 percent of his practice to construction litigation, government contracting and construction and engineering claims avoidance. Mr. Swaja advises public and private owners as well as local, national and international contractors, suppliers, and engineers regarding contract negotiation, contract management, project execution, claim submittal, bid protests and dispute resolution. Mr. Swaja has years of experience in trials and arbitrations, including handling many significant disputes in a first chair capacity. Mr. Swaja also has extensive experience in transactional matters, including negotiating all standard forms of contract (AIA, DBIA, AGC, etc.) as well as customized contracts. Mr. Swaja also has vast knowledge of all areas of government contracting from governing regulations, such as the FAR and DFAR, to bid protests before the GAO and before state agencies.

He is an experienced disputes lawyer who has represented a range of construction and engineering industry clients within the United States. His extensive experience includes various forms of alternative dispute resolution and claim litigation in federal and state courts. Mr. Swaja has taken the lead in all aspects of discovery, as well as examination of witnesses in arbitration and trial. Among other experience, Mr. Swaja was the lead attorney in an international arbitration where he helped the international supply client receive a complete defense award on over \$40 million in claims surrounding disputed alleged latent defects and breaches. Mr. Swaja assisted in the representation of a shipbuilder on a multi-million dollar ship conversion project in a two-phase arbitration, successfully securing an award for disruption, changes and acceleration that was confirmed in federal court. He also represented an international contractor on a multi-million dollar state court action for breach of contract, helping obtain a full judgment of the amounts claimed.

Mr. Swaja was named in *Benchmark Litigator's* exclusive "40 & Under Hot List" for 2018 and 2019. He was also listed in *The Best Lawyers in America*® for Construction Law in 2023 and the five years immediately preceding. Mr. Swaja was recognized as a Georgia "Super Lawyer" in 2023 and the five years immediately preceding and a "Rising Star" in 2016 and the five years immediately preceding for Construction Litigation by *Super Lawyers* magazine. He was recommended by *Legal 500 US* in 2019, 2020, 2021 and 2022 for Construction and in 2020, 2021 and 2022, he was named a "Next Generation Partner" by *Legal 500 US* for Construction. Mr. Swaja was named a 2016 "Legal Elite" by *Georgia Trend* for Real Estate and Construction Law.



Mr. Swaja has contributed to numerous construction law journals, including the annual *Construction Law Update* (Aspen) and *Construction Disputes: Practice Guide with Forms* (Aspen).

Mr. Swaja is a member of the Construction Law Section of the Georgia Bar, as well as the Atlanta Bar Association, Construction Law Section. Mr. Swaja supports the firm's commitment to pro bono representation, including the security deposit program, grandparent adoption program and domestic violence program, and has litigated numerous pro bono cases in state court.

While in law school, Mr. Swaja was a staff member of the *Georgia Law Review* and a member of the Student Bar Association. He participated in the J. Ralph Beard 1L Closing Argument Competition Round of 30 and Russell Moot Court Competition.

Experience

Lead counsel in an international arbitration out of the Bahamas where he represented an international contractor against an owner on millions in claims arising out of change orders and delays on a resort project. The matter proceeded through hearing and the contractor client obtained a multi-million dollar arbitration award, which included recovery of attorneys' fees. At the same time, the team defeated the Owner's delay claim.

Represented an international engineering, construction and services/supply corporation in an international arbitration in Canada involving approximately \$75 million in claims arising out of the design, construction and supply of a new cement plant. While helping the client obtain a multi-million dollar recovery for design, supply and services provided to the Owner, we successfully defeated the Owner's foundational claims of alleged latent defects, which resulted in a complete defense award on all associated damages, including claims of lost profits exceeding \$35 million and additional associated multi-million dollar claims.

Lead counsel who represented an Owner in a multi-million dollar arbitration arising out of a waste to oil energy project in Ohio. The disputes and claims involved complex design and construction liability surrounding a kiln explosion and associated allegations of significant design and construction deficiencies. The arbitration was bifurcated into two phases. In the Phase I portion of the Arbitration, we obtained an award in the client's favor on the issue at hand, which was whether the client would be bound to certain limitations of liability, including a \$1 million liability cap, on its over \$24 million in claims. After a week-long arbitration, we defeated the contractor's arguments on the scope of the cap. By receiving this Award, the parties proceeded to Phase II on damages and the client ultimately obtained a satisfactory, confidential settlement prior to hearing.

Lead counsel in litigation and related arbitration for an EPC contractor defending millions in claims by a subcontractor for civil/structural and electrical work on a cement facility in Texas. In this civil/structural matter, the arbitrator denied the subcontractor's claims in their entirety and awarded our client nearly all of its damages, plus our attorneys' fees.

Represented one of the world's largest industrial engineering and technology companies in an 18 month



arbitration, inclusive of 4 hearing weeks, with the Italian owner of a massive cement production facility in west Texas. The claims and counterclaims of over \$65 million involved highly technical issues requiring significant expert testimony. Post-hearing, our client was awarded a significant amount of its damages, while we helped defeat over 95% of the owner's claims. In addition, our client was deemed the prevailing party and was awarded significant fees and expenses.

Represented an individual and his five franchises, as plaintiffs, in a lawsuit regarding alleged violations of a non-competition covenant in the franchise agreements. The trial court granted summary judgment in favor of plaintiffs, finding that the non-competition covenants were void as a matter of law. This ruling was affirmed by the Georgia Court of Appeals. The Georgia Supreme Court unanimously affirmed the trial and appellate court decisions and rejected all of defendants arguments.

Represent a mechanical subcontractor specializing in industrial piping fabrication and erection against a multinational General Works Contractor (GWC) and a global upstream Engineer-Procure-Construct (EPC) contractor on claims for changed work, acceleration and wrongful termination of contract arising from the construction of a \$1.2 billion, 790 MW coal-fired unit within an existing power plant. Successfully obtained a declaration from the arbitration panel in this case that the mechanical subcontractor's purported termination for default was improper and without cause. Defeated all \$55 million worth of counterclaims asserted by the GWC and EPC contractors against the mechanical subcontractor in the arbitration. Obtained an award against the general and EPC contractors in an amount equaling 95 percent of the mechanical subcontractor's damages sought in the arbitration, plus amounts for pre-award interest, attorneys' fees, costs and expenses. Judicial confirmation of arbitration award pending.

Represented the Massachusetts Turnpike Authority, later MassDOT, on the \$14.6 billion "Big Dig," the largest construction project in North America.

Represented the owner in a multi-year alternative dispute resolution setting and helped resolve more than \$200 million in claims associated with one of the most complex tunnel contracts on the project. The Deputy General Counsel for MassDOT described the matter as "one of the most complex lawsuits in the history of the Commonwealth of Massachusetts" and cited Kilpatrick Townsend's efforts as enabling MassDOT to reach an outcome in the matter that ultimately saved Massachusetts taxpayers millions of dollars.

The firm served as lead counsel in defending a global equipment manufacturer against breach of contract and breach of warranty claims brought by one of the largest producers of carbon steel products in the U.S. Won a motion for partial summary judgment that reduced the carbon steel producer's recoverable damages from \$8.8 million to \$700,000. Negotiated a settlement on terms very favorable to the power generation equipment manufacturer.

Represented MACTEC, Inc., an environmental remediation design/build contractor, in a dispute against Bechtel Jacobs Company (BJC) concerning a remediation system on a site used in the production of nuclear armaments in Oak Ridge, Tennessee. MACTEC asserted claims against BJC as the Management & Integration contractor, and BJC counterclaimed for money it spent supposedly correcting MACTEC's alleged defective work. After a two-week bench trial in the U.S. District Court, the judge issued 174 pages of findings and conclusions and held that BJC breached the contract and acted in bad faith. The court awarded our client, MACTEC, a large sum for damages, including interest and attorneys' fees. The court also rejected BJC's entire counterclaim. On appeal, BJC challenged the trial court's judgment on many fronts, including the testimony of MACTEC's expert witness at the trial. The 6th Circuit rejected BJC's arguments, in their entirety, and affirmed the trial court's judgment. *Mactec, Inc. v. Bechtel Jacobs Co.*, 346 F. App'x 59 (6th Cir. 2009).

Represented large building contractor in a lawsuit alleging that its subcontractors performed defective work in constructing a high-rise condominium building. After mediation, the case was settled on terms favorable to the client.

Represent a marine repair and conversion contractor in disputes arising from a contract for the conversion of a fleet of U.S. Coast Guard cutters. Obtained recovery in arbitration of more than \$8 million on arbitrable claims. As a part of its arbitration award, the firm recovered more than \$1.4 million in attorneys' fees for the contractor, while defeating counterclaims in excess of \$1 million. Remaining disputes are in litigation in Federal Court.

Represented construction company in an arbitration brought by plaintiff against defendant for the recovery of claims in excess of \$2,795,695 related to defendant's alleged breaches of contract and fraudulent omissions on the project known as the Main Plant project in Oak Ridge, Tennessee. We also defended a counter-demand from plaintiff's subcontractor on the Main Plant project which was consolidated with the matter. The plaintiff's subcontractor sought the recovery of an amount in excess of \$636,152 in alleged damages from the Company because it allegedly impacted the plaintiff's subcontractor performance on the project.

The firm served as lead counsel for a national general contractor in defense of two lawsuits in Federal Court related to high rise condominium projects owned and developed by the same owner. During the course of litigation, our attorneys successfully filed motions to dismiss as it related to the general contractor's corporate officers. The parties concluded litigation through settlement, whereby the general contractor received a large sum of money and did not pay the owner despite being the defendant in the lawsuit.

Represented a Las Vegas-based developer/owner in a complex \$85 million arbitration with its general contractor. The dispute arose out of the construction of an ultra-luxury condominium project in Las Vegas and involved more than a dozen consolidated parties.

Acted as a lead counsel representing an EPC contractor on four grassroots nuclear power plant units. These



four units represent the first nuclear construction in the United States in the last 30 years. Handled all areas of discovery in a \$1.6 billion federal court litigation involving two of the units. The litigation was successfully resolved, but representation continues on ongoing claims asserted by various project entities.

The firm served as lead counsel to an international EPC contractor/OEM in multiparty disputes arising out of the construction of an \$800 million coal-fired power generation facility. All disputes were ultimately settled through two separate structured settlement processes – one for disputes among the employer, the client and the clients consortium partner; and the other for disputes between the client and its subcontractors.

Routinely participates in pro bono services with a focus on representing actions of tenants seeking the return of their security deposits from landlords who withheld them in violation of law. The work of these lawyers has recovered thousands of dollars for tenants, enabling them to move into other housing and move on with their lives.

Education

University of Georgia School of Law J.D. (2006)

cum laude

University of Georgia B.S. (2002) Psychology and Criminal Justice, *magna cum laude*

University of Georgia A.B.

Admissions

Georgia (2006)

Court Admissions

U.S. District Court for the Middle District of Georgia (2012)

U.S. District Court for the Northern District of Georgia (2006)

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135 Kilpatrick Townsend Attorneys Recognized in 2022 Super Lawyers

December 15, 2022

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Kilpatrick Townsend Earns Top Recognitions in 2023 Edition of The Best Lawyers in America®

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Kilpatrick Townsend Receives Top Rankings in 2022 Legal 500 US

June 14, 2022

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Kilpatrick Townsend Attorneys Honored in the 2022 Edition of The Best Lawyers in America

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Kilpatrick Townsend Receives Top Rankings in 2021 Legal 500 US

June 14, 2021