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After 40 years as an advocate, Jim O'Connor founded an ADR practice that implements what he determined over time actually works to resolve construction and construction-related insurance disputes.

For more than 35 years, Jim devoted his practice exclusively to construction and construction insurance-related matters. He represented engineers, general contractors, specialty contractors, owners, and designers in contract formation and construction matters throughout the United States.

Jim is a Fellow of the American College of Construction Lawyers, a Fellow of the American Bar Foundation, the former Chair of the ABA Forum on the Construction Industry, and an active member of the AGC's Contract Documents Committee and its Risk Management Committee. He has been published extensively in the construction law area, including the following works: *Sticks and Bricks: A Practical Guide to Construction Systems & Technology* (ABA 2001), co-editor; *AGC Contract Documents Handbook*, Chapter 2, "Owner-Contractor Agreements" (Aspen 2003); "Wrestling with Reform: Indemnification Agreements, The Statutory Bars, Promises to Procure, and Insurance Products for the Construction Industry," 1 *J.A.C.C.L.* 57 (West 2007); *The A201 Deskbook: Understanding the Revised General Conditions*, (ABA 2008); "It's a Matter of Time: Delay and Change," 8 *J.A.C.C.L.* 1 (West 2014); and "Suppose Repose Were Indisposed: A True Story Prediction of Collapse and Disaster for the Construction Industry," 34 *The Construction Lawyer* 5 (Fall 2014).

In 2011, Jim was selected as a 2012 Distinguished Legal Writing Award recipient by The Burton Awards for Legal Achievement for his article titled, "What Every Court Should Know about Insurance Coverage for Defective Construction," 5 *J.A.C.C.L.* 1 (West 2011).

## AREAS OF PRACTICE

### Litigation

- Construction & Real Estate Litigation
- Insurance Coverage Litigation

## BAR ADMISSIONS

Minnesota, 1979

U.S. District Court

- Minnesota, 1979

U.S. Court of Appeals

- Eighth Circuit, 1980

U.S. Court of Federal Claims, 1995

U.S. Supreme Court, 2001

## EDUCATION

Creighton University School of Law

J.D., *cum laude*, 1979

Creighton University

B.A., *cum laude*, 1976

## ADDITIONAL QUALIFICATIONS

Trained Arbitrator, American Arbitration Association

2023: Panelist Safety and Security

2022: Process Essentials for AAA Arbitrators

2021: Impartiality: Do You Know Where Your Biases Are?

2020: Cyber Security: A Shared Responsibility

2019: Case Finances: What Arbitrators Need to Know

2018: Arbitrator Performance and Demeanor – Meeting Participant Expectations

2017: When Experts Come From Different Planets: Tips for Maximizing the Value of Experts

2016: Interim Awards, Partial Final Awards and Functus Officio – Tailoring Flexible Accessories to Suit a Strict Doctrine

2015: Conducting Research and Investigations – The Arbitrator’s Authority

2014: Writing Arbitration Awards – A Guide for Arbitrators

2008: AAA Arbitration Awards: Safeguarding, Deciding and Writing Awards

2006: Dealing with Delay Tactics in Arbitration

2005: Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics

2004: Arbitrator Ethics and Disclosure

2003: Annual Arbitrator Update

2001: AAA Construction Industry Arbitrator II Training: Advanced Case Management Issues

1998: AAA Construction Industry Arbitrator Training

1993: AAA Advanced Construction Arbitrator Training

## SELECTED EXPERIENCE

### ***Owner/Contractor Agreements:***

Has represented:

- A Fortune 250 Minnesota based company in selecting a project delivery system, selecting a builder, and negotiating the design and construction documents for its World Headquarters Campus.
- The largest private owner of real estate in Minnesota in drafting families of construction agreements for use in developing and selling completed turn-key commercial buildings.
- A publicly held gaming corporation in the negotiation of the construction contracts for new casino projects and a hotel tower and casino on the Las Vegas Strip.
- A governmental banking institution in the drafting and negotiation of the construction management agreement for the construction of a major building in downtown Minneapolis.
- A nonprofit art institution in negotiating both architectural and construction contracts for the addition and renovation of its Minneapolis facilities, public galleries and Asian galleries.

### ***Subcontract/Purchase Agreements:***

- Drafted a form subcontract for plastering and drywall companies in Minneapolis.

- Represented a large highway/heavy contractor in developing standard form subcontracts and purchase agreements.

***Litigation:***

- Primary defense counsel of the engineering company that designed the I-35W Bridge that collapsed into the Mississippi River in 2007. Represented client in connection with the NTSB investigation and hearing regarding the collapse. Obtained appellate court dismissal of contribution claims and argued the case in the Minnesota Supreme Court for the dismissal of the State's statutory claims for reimbursement under the Victim's Compensation Statute; the matter is now concluded.
- Representation of a national general contractor and its payment bond surety in connection with a "differing site condition" Miller Act claim asserted by an earthwork subcontractor arising out of the construction of a brig for the United States Navy at the Top Gun campus at Miramar, California. After staying the Miller Act claim until he'd successfully concluded the general contractor's ASBCA claim, Jim tried the Miller Act claim to a defense verdict in the United States District Court for the Southern District of California.
- Representation of the developer of the largest multi-use construction project in downtown St. Paul, and its construction lender in connection with the Galtier Plaza litigation. The \$96 million project was still substantially incomplete two years after the promised completion date, and delivered at a cost of approximately \$140 million. The bank, by virtue of taking a deed in lieu of foreclosing on the construction loan, retained Jim to represent it in connection with defending \$7 million in lien claims; defending a \$5 million delay claim by the construction manager; pursuing its own delay claim against the construction manager; pursuing a professional liability claim against the principal architect; and pursuing separate defective construction claims against several of the prime contractors.
- Representation of the general contractor of a 17 story multi-wing health care and residential facility in Minneapolis, in connection with the owner's demand to reskin the building as a result of the failure of the exterior wall system, a panelized synthetic plaster system. Jim successfully enforced the general contractor's indemnity rights against the curtain wall contractor and its contribution rights against the manufacturer of the synthetic plaster wall system.
- National representation of a major general contractor (in the top 35 on the ENR list) for over 20 years in connection with construction defect claims across the United States.
- Representation of the Associated General Contractors of Minnesota in connection with several major supreme court cases and presentations. Jim has represented the AGC and its membership for more than 15 years.
- Representation of a major milling company in connection with asserting delay claims against its general contractor arising out of the construction of two new flour mill facilities located in Fresno, California and Winchester, Virginia. Jim also represented the miller in connection with the defense of subcontractor lien claims on both coasts.
- Representation of a major government contractor in connection with processing subcontractor payment claims through the Armed Services Board of Contract Appeals.
- Representation of a general contractor's property insurer in connection with a subrogation action against the false work designer for the cost of equipment lost as a result of the collapse of the Lake Street Bridge, which spans the Mississippi River between Minneapolis and St. Paul.
- Representation of general contractors in Minnesota, Florida and Colorado in connection with "sick building syndrome" claims. Jim has developed a particular expertise in this area.

## ACTIVITIES & MEMBERSHIPS

### Professional Activities

- American Bar Association: Forum on the Construction Industry, Steering Committee, Chair of Division 2 (Contract Documents); Governing Committee, past Chair-Elect and Chair
- Minnesota State Bar Association
- Hennepin County Bar Association: Construction Law Section
- American College of Construction Lawyers: Governing Board Member 2015
- Associated General Contractors of America: Member, Contract Documents Forum; Member, Contract Documents and Risk Management Committees; Presenter, AGC's 2017 Risk Management/Surety Symposium (Contractor Additional Insured Protections); Task Force Member on AIA 2017 A201 General Conditions and Owner-Contractor Agreements
- Associated General Contractors of Minnesota: Affiliate Member
- American Arbitration Association: Panel Member; Mega Construction Project Claims Panel Member

## RECOGNITION

The Burton Awards for Legal Achievement, Distinguished Writing Award, 2012

Notable Practitioner in Minnesota for Construction, *Chambers USA*, 2008-2020

Fellow, American College of Construction Lawyers, 2005-Present

Fellow, American Bar Foundation, 2005-2015; Life Fellow 2015-Present

*Who's Who Legal: The International Who's Who of Construction Lawyers*

*Who's Who Legal: The International Who's Who of Business Lawyers: Construction*

*Who's Who International Registry*

*Who's Who National Registry*

Who's Who in Minnesota ADR, *Minnesota Law & Politics*

Recognized on Minnesota Super Lawyers® list, 2001-2021 (*Minnesota Super Lawyers® is a designation given to only 5 percent of Minnesota attorneys each year, based on a selection process that includes the recommendation of peers in the legal profession.*)

AV Preeminent, Martindale-Hubbell® (*AV Preeminent and BV Distinguished are certification marks of Reed Elsevier Properties, Inc., used in accordance with the Martindale-Hubbell® certification procedures, standards and policies.*)

## ARTICLES & PRESENTATIONS

### Publications

- "COVID-19 Business Interruption Insurance Coverage: The Threshold Trigger of 'Direct Physical Loss or Damage' and Other Considerations," 15 J.A.C.C.L. 1 (Thomson Reuters 2021)
- "Uncertainty, Doubt and Rules of Unlearning in the Mediation of Construction Disputes," 40 The Construction Lawyer 2 (Spring 2020)
- "A Critical View of the AIA's New Insurance Exhibit," 12 J.A.C.C.L. 1 (Thomson Reuters 2018)
- "Additional Insured Coverage: The Why, the What & the Wherefore," 11 J.A.C.C.L. 1 (Thomson Reuters 2017)
- Chapter 19 "Duties of Appointed Defense Counsel: Ethical Challenges," Building Better Construction Contracts 2016, Practising Law Institute, 2016

- Chapter 20 "Ethics and the Tripartite Relationship," Building Better Construction Contracts 2016, Practising Law Institute, 2016
- "For Things That Go Boom in the Night: A Primer on Crisis Management for the Construction Industry," 10 *J.A.C.C.L.* 1 (Thomson Reuters 2016)
- "Suppose Repose Were Indisposed: A True Story Prediction of Collapse and Disaster for the Construction Industry," 34 *The Construction Lawyer* 5 (Fall 2014)
- "It's a Matter of Time: Delay and Change," 8 *J.A.C.C.L.* 1 (West 2014)
- "Who Pays the Attorneys' Fees When You Lose the CGL Coverage Battle?" 6 *J.A.C.C.L.* 2 (West 2012)
- "What Every Court Should Know about Insurance Coverage for Defective Construction," 5 *J.A.C.C.L.* 1 (West 2011)
- *The 2007 A201 Deskbook: Understanding the Revised General Conditions*, American Bar Association, 2008
- "Wrestling with Reform: Indemnification Agreements, The Statutory Bars, Promises to Procure, and Insurance Products for the Construction Industry," 1 *J.A.C.C.L.* 57 (West 2007)
- "Delay & Change in the Construction Project," Thomson West *Construction Briefings*, 2005
- "Construction Defects, 'Property Damage' and the Commercial General Liability Policy," 24 *The Construction Lawyer* 30 (Spring 2004)
- "Chapter 2: Owner-Contractor Agreements," co-author, *AGC Contract Documents Handbook (Construction Law Library)*, Aspen (2003)
- "Chapter 4: The New AGC Standard Form of Agreement & General Conditions Between Owner and Contractor," *The AGC Deskbook*, 2002
- "Controlled Construction Insurance Programs: Putting a Ribbon on Wrap-Ups," *The Construction Lawyer*, Winter 2002
- "Controlled Insurance Programs in the Construction Industry: Putting a Ribbon on Wrap-Ups," co-author, 22 *The Construction Lawyer* 30 (Winter 2002)
- *Sticks & Bricks: A Practical Guide to Construction Systems and Technology*, co-author, American Bar Association, 2001
- "What Every Construction Lawyer Should Know About CGL Coverage for Defective Construction," 21 *The Construction Lawyer* 22 (Winter 2001)
- "Program Management: The Constructor's Perspective—On Platypuses and Program Management," 16 *The Construction Lawyer* 11 (Oct. 1996)
- "Note, Illegitimacy Classifications Require Reasonably Strict Scrutiny," 11 *Creighton L. Rev.* 609 (1978)

#### **Presentations**

- "Insurance Requirements are A Chang'in – New Insurance Requirements in the New AIA A201 and Updates to the ConsensusDocs Insurance Provisions," 99th Annual AGC Convention, Associated General Contractors of America, 2018
- "Getting to the Heart of the matter: How to Quickly Identify the Key Features of an Additional Insured Endorsement," 2017 Conference on Surety Bonding and Construction Risk Management, Associated General Contractors (AGC), 2017
- "Real Estate & Construction Insurance: Basics, Tips and Traps," Construction and Real Property Sections, Maryland State Bar Association, 2016

- "Noticeably Older, Arguably Wiser and Still in Need of Work: An A201 Analysis," panel member, The Forum's Greatest Hits: 1976-2016, 2016 Annual Meeting, American Bar Association Forum on Construction Law, 2016
- "Written Advocacy in Construction Litigation," Construction Law Practicum, Midwinter Meeting, American Bar Association Forum on Construction Law, 2016
- "The Construction Lawyer's Role Before and After a Crisis Strikes," ABA Forum on Construction Law Annual Meeting, 2015
- "ConsensusDocs vs AIA: What's New Post-2007 and How Do They Compare?" Construction SuperConference, 2014
- "Construction Defects: Litigating Insurance Coverage Claims A-Z," webcast, National Business Institute, 2013
- "After the Fall: The Legacy of the I-35W Bridge Collapse Litigation and What It Means to the Design & Construction Industry in Minnesota," Maslon Speaker Series, 2013
- "What Arbitrators Prefer: Friendly Encouragement From an Arbitrator of Construction Disputes," University of Kentucky, 2013
- "Insurance Committee Report: Indemnity, Repose Immunity & Annual Update of the CGL Coverage Map," 24th Annual Conference, American College of Construction Lawyers, 2013
- "AIA A201 vs. ConsensusDOCS: A 10-Round Bout to Determine Which Is the Fairest Contract of Them All," Associated General Contractors of America's 92nd Annual Meeting, 2011
- "Construction Financing and the Contractor's Right to Know the Owner's Financial Arrangements for Construction Projects," Associated General Contractors of America's 91st Annual Meeting, 2010
- "The Demise of the Project Manual; Early Bird Financial Disclosures; Hazardous Haz-Mat Revisions; & Insuring the Uninsurable," Associated General Contractors, 2009
- Associated General Contractors of America AIA A201 Audio Conference: "The New A201 What Every Contractor Needs to Know," Maslon Speaker Series, 2007
- "Sharpen Your Pencils: What Every Owner Needs to Know About Contracting with Designers and Constructors," Maslon Speaker Series, 2007
- "Report to the AGC Risk Management Committee on Mold Litigation Nationally: Including Biased Observations & One-Sided Opinions," Associated General Contractors, 2003
- "What Every Construction Lawyer Should Know About Insurance Coverage for Defective Construction: *Henderson* is Extinct & *Weedo* is Moot," Minnesota State Bar Association, 2002
- "Recurring Ethical Predicaments in Construction Litigation," Minnesota Institute of Legal Education, 2001
- "Observations on the Revisions to the AIA Contract Documents: A201, B141 & C141," University of Minnesota/AIA MN, 1998
- "Observations About Three of the AIA A201's Major Changes," American Bar Association, 1997
- "A Few Ethical Considerations in the Administrative Context," NBI, 1997
- "Constitutional & Procedural Defenses: What Employers Should Know About OSHA Administrative Warrants and Administrative Charges," NBI, 1997
- "*Adarand Constructors, Inc. v. Pena* & The State of Race-Based Preferences in the Construction Industry—One Year Later," Minnesota Institute of Legal Education, 1996
- "*Adarand Constructors, Inc. v. Pena* & The Future of Affirmative Action in Public Construction," Minnesota Institute of Legal Education, 1995

- "The Ethics of Claim Development and Presentation: Sandstone Is Not Just a Building Material," Minnesota Institute of Legal Education, 1995
- "Indemnification Agreements, The Statutory Bars, Promises to Procure and Insurance Products for the Construction Industry," American Bar Association, 1995
- "Bad Faith Litigation and the Contract Surety: Tips for Defending Bad Faith Claims," Minnesota Institute of Legal Education, 1994
- "Securing Indemnity Agreements with Insurance Products," Minnesota Institute of Legal Education, 1994
- "Indemnification in the Construction Industry: A 50 State Survey," American Bar Association, 1994
- "Contractors' Indemnity Obligations & the Statutory Bar," Minnesota Institute of Legal Education, 1993
- "Indemnity, What It Is and What It Ain't," RIMS 1993
- "The Sistership Exclusion & Property Damage Coverage in the CGL," Minnesota Institute of Legal Education, 1993
- "What to Do Until the Supreme Court Reverses *Watson-Forsberg*," MN AGC 1992
- "The Construction Management Project Delivery System and the CM's Liability to Owners and Others," Minnesota Institute of Legal Education, 1989
- "General Contractor Tort Liability for Worksite Injuries," Minnesota Institute of Legal Education, 1986
- Jim regularly lectures on construction law topics on both a local and national level. He has lectured classes on construction contracting at Creighton Law School and the University of Minnesota School of Architecture.