



FABYANSKE  
WESTRA  
HART &  
THOMSON

Email: [dthomson@fwhtlaw.com](mailto:dthomson@fwhtlaw.com)

Direct: 612.359.7624

Fax: 612.359.7602

---

## Dean B. Thomson

*Shareholder*



---

## Practice Areas

- Construction
- Commercial Litigation
- Arbitration
- Mediation and Alternative Dispute Resolution
- Property and Liability Insurance Claims
- Court Appointed Neutral Appraisal Umpire
- Surety Claims and Workouts
- Public Bidding and Procurement
- Architectural and Engineering Liability
- Labor and Employment Law
- Real Estate Litigation

---

## Professional Activities and Achievements

### **Fellow, American College of Construction Lawyers (2000-2019)**

- Board of Governors (2008-2010)
- Executive Committee (2021-2023)
- President Elect (2023)

## Member, Minnesota Bar Association

- Construction Law Section (Chairperson 1993, Member of Governing Council 1991-1996, Chairperson of Legislative Subcommittee 1995-Present)
- Member of MSBA Assembly (2005-2006)

## Member, American Bar Association

- Forum on the Construction Industry (Steering Committee Member, Dispute Resolution and Avoidance Division)

## Member, American Arbitration Association

- Member of Large, Complex Construction Case Panel and Construction Mega Project Panel
- Member of National Panel of Mediators and Master Mediation Panel
- National Construction Dispute Resolution Committee past member
- Regional Advisory Panel for Construction Arbitration
- Instructor for AAA Arbitrator Training

## Member, Minnesota Associated General Contractors

- Board Of Directors (1999-2001, 2008-2010)
- Legislative and Contract Forms Committees

## Recognitions

- “AV Preeminent” (highest) rating by Martindale-Hubbell Legal Directory
- Band 1 (highest) rating in Construction by Chambers USA (2008-present)
- Leading attorney in the field of Construction Law by Who’s Who
- Selected for inclusion in “Best Lawyers in America” for Legal Construction and Litigation-Real Estate (2010-present)
  - “Best Lawyer of the Year” in Minneapolis for Litigation-Construction (2013)
  - “Best Lawyer of the Year” in Minneapolis for Litigation-Real Estate (2014)
  - “Best Lawyer of the Year” in Minneapolis for Construction Law (2018-2020)
- Selected by Minnesota Journal of Law and Politics as:
  - One of the Top 10 “Super Lawyers” in Minnesota (2006, 2015-2017)
  - One of the Top 100 “Super Lawyers” in Minnesota (2003-present)
  - A “Super Lawyer” in Minnesota Construction Law (1997-present)

## Certifications

- Qualified ADR neutral in Minnesota Courts per Rule 114
  - Arbitrator in 75+ cases
  - Mediator in 75+ cases
  - Court Appointed Appraiser
- Construction Specifications Institute, CDT

## Representative Cases

---

Contract Negotiations: Negotiated many billions of dollars worth of design and construction contracts, including those for the new U.S. Bank Stadium project.

*ISC v. Lunda*. Defeated \$13 million acceleration claim by fabricator, prevailed on counterclaim, and obtained full fees and costs.

*EDF v. RES*: Defeated \$9 million Constructive Acceleration and Force Majeure Claim on a wind turbine project.

*Faith v. Aurora Solar*. Successful \$33 million Mechanics Lien on Solar Project including full fees and costs.

*Lunda v. PDM Bridge*. Obtained \$16+ million judgment for delay, disruption, and material breach on bridge project.

*Raytheon, Ames, Kraemer v. MnDOT*. Procurement: Largest successful bid protest in Minnesota history.

*Westfield Insurance Company v. Weis Builders, Inc. Insurance*: Obtained over \$15 million in coverage for diminution in value and cost of repair claim arising out of water intrusion.

*Stahl Construction v. Fern Hill Development*. Delay, Disruption, and Acceleration: Obtained multi-million dollar judgment for contractor on delay, disruption, and acceleration claim on condominium project.

*Framing Systems, Inc. v. Weis Builders, Inc.* Defeated multi-million dollar delay, disruption, and acceleration claim based on failure of proof and intentionally overstated lien.

Differing Site Conditions: Five \$1 million+ settlements with MnDOT and counties over differing site conditions and breach of implied warranty claims.

*M.W. Johnson Construction Company v. Progress Land Development*. Damages: Breach of contract judgment recovering lost benefit of bargain and lost profit damages in excess of \$4 million.

## Publications

---

*Early Mediator Engagement: Lessons from Master Mediators*, 15 Journal of the ACCL 39 (2021)

*The Advocacy Preferences of Construction Arbitrators*, 14 Journal of the ACCL 67 (2020)

*Inside the "Black Box": The Preferences, Practices, and Rule Interpretations of Construction Arbitrators*, 12 Journal of the ACCL 37 (2018)

Significant Changes to the AIA Document A201-2017, 11 Journal of the ACCL 19 (2017)

*The Guided Choice Process for Early Dispute Resolution*, 1 The American Journal of Construction Arbitration & ADR 23 (2017)

*Indemnity Wars: Anti-Indemnity Legislation Across the Fifty States*, 8 Journal of ACCL 1, (2014)

*The Business Risk Doctrine in Minnesota: The Emperor Has No Clothes*, 35 Hamline Law Review 43 (2012)

*Can Vague Regulations be "Narrowly Tailored"? An Analysis of the U.S. Department of Transportation's DBE Regulations*, 6 Journal of the ACCL 1 (Winter, 2012)

*Incomplete Repairs: New Remedies for Disputes in Residential Construction*, 68 Bench & Bar of Minnesota 18 (Issue 9, October 2011)

*A Modest Proposal: Conflicting Judicial Decisions Mandate Coverage*, 3 Journal of the ACCL 1 (Winter, 2009) (Winner of National Burton Award for Legal Writing)

*The 2007 A201 Deskbook* (ABA 2008)

*A Critique of Best Value Contracting in Minnesota*, 34 William Mitchell Law Review 25 (2007)

State-by-State Guide to Construction Contracts and Claims: Minnesota (Aspen 2006)

50 State Construction Lien and Bond Law: Minnesota (3rd Ed. Wolters Kluwer 2015)

*A Disconnect of Supply and Demand: A Survey of Construction Mediation Practices*, 21 *The Construction Lawyer*, No. 4, 17 (2001)

Minnesota Law for Design Professionals, Lorman Education Services (2000-2001)

*Best Value in State Construction Contracting*, 19 *The Construction Lawyer*, No. 2, 31 (1999)

*The 1997 AIA Document A201, A Guideline to New Provisions*, 97-12 (Fed. Pub. 1997)

*Dysfunctional ADR: Tips to Avoid the Pain*, 16 *The Construction Lawyer*, No. 4, 26 (1996)

*The Forum's Survey of the Current and Proposed AIA A201 Dispute Resolution Provisions*, 16 *The Construction Lawyer*, No. 3, 3 (1996)

*Arbitration Theory and Practice: A Survey of AAA Construction Arbitrators*, 23 *Hofstra Law Review* 137 (1994)

Construction Claims in Minnesota, Lorman Educational Services (1989-2001)

## Selected Papers and Presentations

---

"Guiding Mediation to Meet Demand" ABA Forum on the Construction Industry Annual Meeting (2022)

"Are Your Ethics in Jeopardy?" ABA Forum on the Construction Industry Spring Convention (2019)

"Inside the Black Box: The Preferences, Practices, and Rule Interpretations of Construction Arbitrators," ABA Forum ADR Summit (2015)

"The Evolving Scope of Additional Insured Coverage," IRMI Annual Construction Insurance Conference (2013)

"Potential Profit or Pitfall: What Contractors Need to Know About Public/Private Partnerships," National AGC Annual Convention (2012)

"Quantum, the Forgotten Element," ABA Forum on the Construction Industry Fall Convention (2011)

"Don't Be Colorblind to Green Risks," MSBA Construction Law Symposium (2009)

"Legal Issues Regarding BIM," MnAGC Annual Convention (2007)

"Effective Construction Dispute Avoidance and Resolution in Minnesota," National Business Institute (2004)

"A Lawyer's Viewpoint on Masonry Design and Construction Problems," University of Minnesota IT Continuing Education (2004, 2009)

"Comparing the Legal Implications of Various Project Delivery Systems," MnAGC Annual Convention (2004)

"Arbitration and the Law – Recent Cases," AAA National Forum on Conflict Resolution (2003)

"12 Steps to a Successful Design-Build Project," MSBA Real Estate Institute (2003)

"The Risks of 'Best Value' Design-Build Procurement in the Public Sector," ABA Forum on the Construction Industry Fall Convention (2003)

"Representing the Plaintiff or Defendant in a Mold Claim," MSBA Real Estate Institute (2002)

"Statutory Authority for Design-Build," Lorman Education Services (2002, 2003, 2006)

"A Legal and Practical Guide to Contractor Default Insurance and Directed Suretyship," published in the *Law of Suretyship* (2nd Ed. ABA 2000), and presented to the Surety Association of America and the Fidelity & Surety Law Committee of the Tort and Insurance Practice Section of the American Bar Association (2000)

"Big Projects, Big Bucks, Big Risks: Examining Heavy Construction," ABA Forum on the Construction Industry Annual Convention (1999)

“Representing Owners and Developers in Negotiating Design and Construction Contract Documents,” MSBA 16th Annual Real Estate Institute (1998)

“Arbitration: Preparing for the 21st Century,” Section of Dispute Resolution, American Bar Association and New York City Bar Association (1998)

1998 Construction Institute: “The New AIA Document B141,” Minnesota Institute of Legal Education (1998)

The 1997 Edition of AIA Document A201, MnAGC Annual Convention (1998)

1997 Construction Institute: “New Developments in Subcontracting,” Minnesota Institute of Legal Education (1997)

“The New Minnesota AGC Standard Subcontract,” MnAGC and National AGC Midyear Meetings (1996)

“Dysfunctional ADR: Tips to Avoid the Pain,” ABA Forum on the Construction Industry Annual Convention (1996)

“Minnesota Construction Law: What Do You Do When ...?,” National Business Institute (1996)

“The Subcontractors’ Bill of Rights: An Analysis of the ASA’s Proposed Legislation,” MnAGC Annual Convention (1996)

“Minnesota’s New Payment and Performance Bond Statute,” Minnesota Institute of Legal Education (1995)

“Project Labor Agreements,” Minnesota Institute of Legal Education (1995)

1995 Construction Institute: “Arbitration,” Minnesota Institute of Legal Education (1995)

“Weather and Other Uncontrollable Delays,” MnAGC Annual Convention (1994)

“Recent Developments in Mechanic’s Liens, Payment Bonds, and Equitable Liens,” MSBA Construction Law Symposium (1993)

“Extraordinary Collection Procedures and Bankruptcy Practice in Minnesota,” National Business Institute, Inc. (1992)

“Keeping Payment Despite A Preference Claim,” *Association Contractor Magazine* (1991)

“Consolidation in Arbitration,” Minnesota Institute of Legal Education (1990)

“Rights and Remedies of Contractors, Subcontractors, and Suppliers on Financially-Distressed Projects,” Minnesota Continuing Legal Education (1989)

“Delays, Disruption and Acceleration,” Legal Aspects of Highway Contracting Seminar, Minnesota Department of Transportation (1984-1989)

“How to Deal With an Insolvent Contractor,” 2 *The Contractor Magazine*, (1989)

## Legislative Activities

---

### **Through MSBA, assisted in initiating, drafting and lobbying for the passage of the following legislation:**

Minnesota’s Public Contractor’s Payment and Performance Bond Act: Minn. Stat. §574.26-.32 (1994): changing the requirements for providing and making claims against payment and performance bonds on public projects Mechanic’s liens;

Minn. Stat. § 514.13 (1995): preserving unjust enrichment claims and deleting bill of particulars requirement Surety law;

Minn. Stat. §§ 574.31, subd. 1 and 2 (1995): allowing negotiated deadline for payment bond claims and preserving common law and equitable rights of sureties Prompt payment;

Minn. Stat. § 471.425, subd. 4(a) (1995): extending prompt payment obligations of state to municipalities Building and construction contracts;

Minn. Stat. § 337.10, subd. 1, 2, 3, 4 and 5 (1997): establishing venue for Minnesota projects; prohibiting lien waivers without consideration and enumerating prompt payment and progress payment obligations Procurement reform;

Minn. Stat. §16C.01 et seq. (1998): integrating competitive bidding for building and construction contracts into the Minnesota Department of Administration's new "best value" procurement system Minnesota's Public Contractor's Payment and Performance Bond Act;

Minn. Stat. § 574.31 (2001): clarifying notice requirements on payment bond claims Design-Build Procurement;

Minn. Stat. §§ 161.3410-3428 (2001): allowing and establishing design-build procurement of Minnesota Department of Transportation projects No Damage for Delay;

Minn. Stat. § 15.411 (2002): prohibiting the use of "no damage for delay" clauses on public projects Design-Build Procurement;

Minn. Stat. §§ 16C (2006): allowing and establishing design build and construction manager at risk procurement on certain Minnesota Department of Administration, University of Minnesota and Minnesota State Colleges and Universities Mechanic's Liens;

Minn. Stat. § 514.10 (2006): using bonds in lieu of work to remove liens from property Homeowner Warranty;

Minn. Stat. § 327A (2010): notice and opportunity to repair and early neutral evaluation as a condition to litigation Indemnity;

Minn. Stat. § 337.05 (2013): identifying what standard insurance products are allowable under an anti-indemnity statute.

Minn. Stat. § 337.10 (2016): establishing retainage limits and ability to suspend performance for non-payment.

Minn. Stat. § 541.051 (2018): redefining the start of the statute of limitations relating to construction and design claims.

Minn. Stat. § 16C.281 and § 471.345 (2019): conferring jurisdiction for procurement protests in district courts and establishing deadlines.

## Education

---

- J.D., University of Minnesota Law School, *cum laude*, 1982
- B.A., Carleton College, 1978

## Admissions

---

- State of Minnesota, 1982
- State of Wisconsin, 2008
- State of North Dakota, 2011
- United States District Court, Minnesota, 1984
- United States District Court, E. and W. Dist. Wisconsin, 1995
- United States Court of Federal Claims, 2003
- United States District Court, North Dakota, 2011
- Court of Appeals, Federal Circuit, 1993
- Court of Appeals, Eighth Circuit, 1999
- U.S. Supreme Court, 2015