

BENJAMIN, BAIN HOWARD & COHEN | LLC

Alvin M. Cohen

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Al Cohen is a trial lawyer, representing businesses involved in the construction and real estate industries. Typical clients include prime contractors and subcontractors, materials suppliers, homebuilders, land developers and commercial real estate developers. Al's practice includes both private sector projects and government contracts. Although most of his work involves the real estate and construction industries, he also litigates other types of commercial disputes. Al began his career as a trial lawyer for the Tennessee Valley Authority, where he handled numerous construction disputes, many of which went to trial in federal court or before the Board of Contract Appeals. He has been in private practice in Denver since 1985.

Beginning in 2009, Al has been ranked by Chambers USA as one of just eight Leading Individuals representing Colorado's best lawyers in Real Estate/Construction litigation. Super Lawyers® also has recognized Al with his inclusion in the Colorado Super Lawyers® list each year since 2010, where in 2011 he is one of 17 construction lawyers so recognized.

In addition to his trial practice, Al serves as advisory counsel to his construction clients. He is a member of the American Arbitration Association panel of arbitrators

and he lectures on various construction topics.

Practice Areas

- ◆ **Construction Law and Litigation**
 - ◆ **Real Estate Litigation**
 - ◆ **Commercial Litigation**
 - ◆ **Contract Drafting and Negotiations**
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Representative Matters

Claims involving delays, schedule compression or productivity loss due to schedule disruptions:

- ◇ Represented a subcontractor on an acceleration and disruption claim involving the purified process piping for an Intel micro-processing facility in Colorado Springs, where the original claim was for \$45 million. The claim was satisfactorily settled after a two week ADR "mini-trial" with Intel, the general contractor, and the three largest subcontractors, including Al's client.
- ◇ Represented a blasting subcontractor on a mountain casino project, where the issues centered on whether unforeseen site conditions contributed to blast damage and impacted the project schedule.
- ◇ Represented a national electrical subcontractor on a disruption claim arising out of the installation of navigational aids at DIA for the FAA. The disruption claim

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totaled over \$1 million, and was eventually settled for approximately 75 cents on the dollar.

- ◇ While at the Tennessee Valley Authority, almost all of Al's construction cases involved schedule delay or disruption claims. Those included claims involving the construction of an office complex, a flume restoration project for an historic hydroelectric plant, and several nuclear plants. Most prominent was a \$20 million claim by a structural steel fabricator, and a counterclaim by the agency for defective work, where the agency was ultimately awarded \$1.8 million after trial.

Claims involving express and constructive changes, including differing site conditions:

- ◇ Represented the owner of a large regional mall in connection with unanticipated settlement of the ground and consequent damage to the retail spaces.
- ◇ Satisfactory resolution of a \$2.5 million claim by an electrical subcontractor for undisclosed underground conditions in connection with the Industrial Waste Containment Upgrade Project at DIA. Those claims included a loss caused by undisclosed lignite at the job site.
- ◇ Defense of a \$2 million claim by an excavation contractor who asserted that its work was disrupted by unanticipated rock conditions. After separate week-long liability and damages trials, the contractor was awarded only 15% of its claim.
- ◇ Defense of a claim by one of the nation's largest general contractors arising out of the design and construction of the control system for a coal gasification plant. After a two week trial before the Board of Contract Appeals, the claim was rejected in its entirety.
- ◇ Represents homebuilders (and occasionally homeowners) in a variety of defect claims, such as expansive soils, stucco defects, roof

and basement leaks, defects in finish work, etc.

- ◇ Represents contractors and suppliers in mechanic's lien actions, as well as developers in the defense of such actions.

Real Estate Litigation

- ◇ Al represented a real estate developer in a lender liability claim against Mellon Bank. A five week jury trial resulted in a \$64 million jury verdict in favor of the developer which, at the time, was the largest jury verdict in Colorado history. On appeal, liability was affirmed, and the damages were reduced to approximately \$15 million (which was more in line with the damages requested).
- ◇ Represented a partner in a real estate development against his partner, who misappropriated construction funds disbursed by the lender.
- ◇ Represented a real estate developer on a \$1 million deficiency claim by the lender. Based on the jury's finding of a bad faith foreclosure bid, the lender recovered nothing.
- ◇ Represented the seller of a commercial lot against a buyer's claim that site development work was improperly performed. After a two week arbitration, the buyer was awarded only 15% of the claimed damages.
- ◇ Defended two "spurious lien" cases, both of which resulted in favorable results within weeks of the liens being filed.
- ◇ Handled numerous disputes between co-owners of development partnerships and limited liability companies.

Articles and Presentations

- ◇ *Negligence: The Construction Claim Panacea?* 11 Colorado Lawyer 1992 (November 1986).

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- ◇ *Let the Builder-Vendor Beware: The Demise of Caveat Emptor in Colorado*, 16 Colorado Lawyer 463 (March 1987).
- ◇ *Let the Builder-Vendor Beware: Defenses and Damages in Home Builder Litigation*, 16 Colorado Lawyer 629 (April 1987).
- ◇ *The Potential and Perils of Colorado Public Construction Contracting*, 16 Colorado Lawyer 2131 (January 1988).
- ◇ *Negligence Claims in Construction Litigation*, 8 The Construction Lawyer 3 (March 1988).
- ◇ *Landmark Changes in Colorado Construction*, Law 26 Colorado Lawyer 123 (June 1997).
- ◇ *Colorado Public Construction Contracts*, Institute for Advanced Legal Studies, 1988.
- ◇ *Construction Claims and Job Profitability in Colorado*, National Business Institute, 1988, 1994, 1999 and 2003.
- ◇ *Advanced Construction Law in Colorado*, National Business Institute, 1994, 1996, 1997, 2000, 2001 and 2003.
- ◇ *Construction Liens in Colorado*, Lorman Education Services, Inc. 1994.
- ◇ *Risk Management in Construction*, Lorman Education Services, Inc., 2005-2006.
- ◇ *Construction Payment Remedies*, National Business Institute, 1997.
- ◇ *The Fundamentals of Construction Contracts*, Lorman Education Services, Inc., 2005-2009, 2011.
- ◇ *Public Construction Contracts*, Lorman Education Services, Inc., 2011.

- Super Lawyers® recognition as one of 17 rated construction lawyers.
- Recipient, “The Civil Litigation Writing Award,” Colorado Bar Association.
- Member, National Panel of Arbitrators for construction arbitration, for the American Arbitration Association.

Bar and Court Admissions

- Tennessee and the U.S. District Court for the Eastern District of Tennessee, 1979
- U.S. Courts of Appeals for the Fourth, Fifth and Sixth Circuits, 1980-85
- Colorado, 1986
- U.S. District Court for the District of Colorado, 1986
- U.S. Tenth Circuit Court of Appeals, 1977

Education

- Boston University School of Law, J.D., Cum Laude, 1979.
- Duke University, B.A., Magna Cum Laude, 1976.

Professional Experience and Awards

- Colorado Bar Association, Litigation and Construction Sections.
- Chambers USA rating as one of eight leading lawyers in Real Estate/Construction