

BENJAMIN, BAIN HOWARD & COHEN | LLC

James W. Bain

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Jim Bain specializes in construction law and litigation and real estate litigation. He has been the editor of the Construction Law Forum of the Colorado Lawyer since its inception in 1995. He has published numerous construction law and other articles and is a frequent lecturer in continuing legal education and other courses. Jim served as the chairman of the Legal Advisory Committee of the Associated General Contractors of Colorado. He has been a member of the American Arbitration Association panel of arbitrators for construction since 1986.

Jim primarily represents businesses involved in the construction and real estate industries. He represents one of the nation's largest homebuilders as well as owners, construction contractors and subcontractors, material suppliers, land developers, and commercial real estate developers. Jim works primarily in private sector developments but has had substantial experience with government contracts having worked for the Tennessee Valley Authority for 9 years. In addition to his trial practice, he also advises his clients about construction contracts, and assists them in preparing their contract documents.

Practice Areas

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

- ◇ Represented home builders in construction litigation since 1990
- ◇ Successful prosecution of claims regarding \$150 million design/build contract for a coal gasification facility
- ◇ Recovered more than \$1.7 million for defective design/construction of resort condominiums; judgment upheld on appeal
- ◇ Recovered more than \$1 million for construction defects and expansive soil problems from architect, contractor and developer in construction of a shopping center
- ◇ Represented homeowners in expansive soil and other construction defect claims, including recovering \$1.1 million for a homeowner in an expansive soils case
- ◇ Recovered \$3 million in action against airport contractor, unveiling complex cement scheme
- ◇ Successfully prosecuted an antitrust action against 29 multi-national companies; the case generated 10 million documents and required deposition of all US utilities with

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- nuclear reactors and uranium consultants; client recovered more than \$250 million
- ◇ Successfully reduced by almost 50% utility's contractual obligation of nearly \$120 million to a multinational corporation
- ◇ Prosecuted defective product lawsuit on behalf of large public company against two multinational chemical companies; recovered more than \$1.5 million
- ◇ Successfully defended patent infringement action for national agricultural products company
- ◇ Recovered all damages sought in national trademark infringement action
- ◇ Successfully brought action for misappropriation of trade secrets involving patentable technology
- ◇ Negotiated speedy settlement before filing complaint for trade secret misappropriation
- ◇ Resolved claims for breach of major long-term gas lease for a fraction of full claim.
- ◇ Represented real property owners in trial to collect on \$4.5 million promissory note; reduced client's liability reduced to \$500,000
- ◇ Prosecuted action involving fraud and document fabrication in the sale of an office building
- ◇ Successfully defended a foreclosure action using creative lender liability defenses
- ◇ Successfully represented clients against governmental entities in zoning, unconstitutional takings, 1983 claims and Rule 106 actions
- ◇ Represented clients in purchase of private golf course by a special district
- ◇ Represented landowners against property down-zoning and imposition of unreasonable conditions on property
- ◇ Settled breach of fiduciary duty action against ex-directors of special district for less than 10% of amount sought
- ◇ Prosecuted action regarding Boulder's comprehensive rezoning resulting in Colorado Supreme Court decision, *Jafay v. Board of County Commissioners*, 848 P.2d 892 (Colo. 1993)

Articles and Presentations

- ◇ *Informal Rulemaking: In Quest of Reform*, 55 Den, L. Rev. 177, 1978
- ◇ *Owners Rights and Liabilities for Defective Design*, Colorado Real Estate Journal, May, 1996
- ◇ *Under Trust Fund Statute Non-Payment Can Be Criminal Charge*, AGC On-Site, March, 1987
- ◇ *Bidding Mistakes in Public Construction*, AGC On-Site, March, 1990
- ◇ *How to Handle Your Insurance Carrier*, AGC On-Site, May, 1994
- ◇ Co-Author, *Landmark Changes in Colorado Construction Law*, 26 Colo. Law. 123, June, 1997
- ◇ *Negligence: The Construction Claim Panacea*, 15 Colo. Law. 1992, November, 1986
- ◇ *Let the Builder-Vendor Beware: Defenses and Damages in Home Builder Litigation*, 16 Colo. Law. 629, April, 1987
- ◇ *Let the Builder Beware: The Demise of Caveat Emptor in Colorado*, 16 Colo. Law, March, 1987
- ◇ *Colorado Public Construction Contracting*, 16 Colo. Law. 2131, January, 1988
- ◇ *Negligence Claims In Construction Contracting*, ABA's The Construction Lawyer, March, 1988
- ◇ *Just Compensation In Condemnation Cases*,

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18 Colo. Law. 735, September, 1989

- ◇ *Owners Rights and Liabilities for Defective Design*, Colorado Real Estate Journal, May 1996
- ◇ *Negligence Claims in Construction Contracting*, The Construction Lawyer, March 1998
- ◇ Instructor, *Legal Research and Writing and Appellate Advocacy*, University of Florida Law School, 1976
- ◇ Trial Advocacy Program, Univ. of Colorado, 1987-1990
- ◇ Lecturer, *The Construction Defect Reform Act: Jedi Returns*, 2004 Colorado Real Estate Symposium
- ◇ Mechanic's Lien Seminar, A.G.C of Colorado (November 1987)
- ◇ *Colorado Public Construction Contracts*, The Institute for Advanced Legal Studies, Univ. of Denver-Seminar Chairman (1988)
- ◇ *How to Contract with a Bureaucrat*, Colorado Construction Industry EXPO '90 (1990)
- ◇ *Computer Simulation in Construction Litigation*, Annual Convention of Colorado Bar Association (1997)
- ◇ *Use of Technology for Discovery and Trial*, Colorado Trial Lawyers Association (November 1997)
- ◇ Speaker, Annual Civil Litigation Conference, BNA-Law Education Institute (1994)
- ◇ *Reducing Risks in Construction*, Lorman Business Center Seminar
- ◇ Speaker, Annual Civil Litigation Conference, BNA Law Education Institute, (1994)
- ◇ *Bidding Mistakes in Public Construction*, AGC On-Site, March, 1990

Professional Experience and Awards

- Tennessee Valley Authority (80 member legal department) trial attorney (1977-85)
- Roath & Brega, P.C. (98 lawyer firm), shareholder (1985-89)
- Brega & Winter, P.C. (28 lawyer firm), founding manager (1989-2003)
- Adjunct Professor, University of Colorado Law School
- Adjunct Professor, University of Florida Law School
- Recipient, "The Civil Litigation Writing Award", Colorado Bar Association
- Listed in Marquis' *Who's Who in American Law*
- Listed by Outstanding Lawyers in America
- Editor, Construction Law Form of The Colorado Lawyer since 1999
- Member, National Panel of Arbitrators, American Arbitration Association (commercial and construction cases) since 1986
- Former Chair, Legal Advisory Committee of the Associated General Contractors

Bar and Court Admissions

- Florida, 1977
- Colorado, 1985
- U.S. Supreme Court, 2002

Education

- Florida College of Law, J.D., *cum laude*, 1976
- University of Connecticut, B.A., *cum laude*, Phi Beta Kappa, 1972