

Bruce A. Norris

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Professional Summary

The construction industry is one of the most wide-reaching and economically impactful industries in the United States. Mr. Norris has been involved in the construction industry his entire professional career. Initially, he graduated with a degree in Building Construction and worked for an engineering firm in various roles including as a construction administrator. Later, he graduated from law school and became a founding member of the law firm Kirwin Norris, a boutique firm dedicated solely to the practice of construction law. And more recently, he has increasingly served as a third-party neutral and mediator. As such, Mr. Norris has successfully guided the negotiated resolution of hundreds of complex commercial disputes, the majority of which involved construction and real estate related matters.

Recognitions

In 2005, Mr. Norris became a member of the inaugural class to be Board Certified in Construction Law by the Florida Bar. He is also included on every major published list of the nation's leading construction attorneys including *Chambers & Partners*, *Super Lawyers*, *Best Lawyers In America*, and *Top Attorneys in Florida*.

Experience

Legal

Shareholder – Kirwin Norris, P.A., *Orlando, FL* (1997 to present)

Founding member and co-managing partner of boutique law firm dedicated exclusively to the practice of construction law with its primary goal to assist clients in the timely completion of financially successful projects. Within its practice area of construction law, the firm provides the broad range of legal services from a project's conception through its completion. To that end, Mr. Norris serves as both legal and business advisor to senior executives and managers of owners, developers, design professionals, contractors, sureties, and subcontractors in the areas of: contract drafting and negotiation, bidding and procurement, bonding and insurance matters, project administration and on-site performance issues, and the analysis, preparation, and negotiation of claims. He is committed to proactively avoiding disputes and to resolving them through alternative forms of dispute resolution, but where necessary has aggressively initiated or defended litigation in both federal and state courts as well as arbitrations. Has personally prepared or litigated multi-million dollar construction contracts and claims in connection with utility plants, stadia, hospitals, commercial and educational buildings, military facilities, bridges, and roadway projects. Typical issues include design and plan errors, changed conditions, extra work, and schedule impacts (delays, accelerations, inefficiency and lost-labor productivity).

Legal

Attorney – Moye O'Brien et al., *Orlando, FL* (1994 to 1996)

Represented contractors, sureties, and design professionals during all phases of construction. Issues included contract negotiation, preparation and defense of

claims, non-payment, labor and management disputes, and litigation of claims.

Construction R.G. Vanderweil Engineers, Inc., *Maitland, FL* (1984 – 1991)

Construction Administrator (1989 - 1991).

Performed construction administration oversight for over \$250 million in annual construction work. Typical projects included hospitals, resorts, educational facilities, and commercial buildings. Responsibilities included field engineering, reviewing submittals and shop-drawings, issuing and negotiating change orders, project scheduling and accounting, and ensuring compliance with applicable codes.

Mechanical Designer (1984 - 1988).

Designed HVAC and plumbing systems for hospitals, schools, and commercial buildings. Responsibilities included performing design calculations and preparing project construction documents (drawings and written specifications).

Education

Legal **Juris Doctorate** - May 1994.
Cumberland School of Law - Samford University; *Birmingham, AL.*

Concentrated legal studies on topics related to construction law including federal construction contracts and claims, design professional liability, environmental issues affecting construction, and liability associated with indoor-air-quality and sick-building syndrome.

Construction **Bachelor of Building Construction** - May 1990.
University of Florida; *Gainesville, Florida.*

Under the College of Architecture, this degree emphasizes construction management (estimating, scheduling, administration, labor, and project management), structural and civil engineering (surveying, foundations, structural design), and construction technology (building systems, mechanical and electrical systems, and building materials).

Admissions & Certifications

- Admitted: Florida (1994); Georgia (2001)
- All US District Courts in Florida (Northern, Middle, and Southern)
- FL Supreme Court Certified Civil Circuit Mediator (2008)

Representative Matters as Lawyer

The process of taking a construction project from concept to completion requires the application of sophisticated legal principles to a variety of complex factual circumstances. Because of this diverse nature of construction law, Mr. Norris has routinely practiced in areas and topics including contract drafting and negotiations, land-use and zoning, acquisition and finance, labor relations and employment law, government contracting, administrative law, public procurement and finance, risk management and insurance, bonds and suretyship, occupational safety, and dispute resolution of claims through mediation, litigation, and arbitration.

The following summarizes a few of the legal services and illustrative matters Mr. Norris has personally handled during his 25-year career as a construction lawyer. This information is presented in the typical life-span of a construction project – from its concept to completion.

Project Concept

Assists clients with navigating procurement processes and contract negotiations including: evaluating land-use and zoning issues, land acquisition and financing, establishing business entities such as joint-ventures, addressing licensure issues, reviewing bid documents, prosecuting and/or defending bid protests, and drafting & negotiating contracts.

Contracts

Reviewed, drafted, and/or negotiated literally hundreds of contracts related to the design and construction of commercial projects including varying forms of project delivery systems and project participants (e.g. – design professional agreements, CM-at-Risk, prime and subcontract agreements, design-build agreements, joint ventures, purchase orders, and other related construction, business, and real estate agreements). That experience includes modifying common industry form documents such as AIA, EJCDC, and DBIA as well as creating project specific agreements from scratch. Typical contract issues include, without limitation: indemnity obligations, insurance and bonding issues, warranty, payment terms and procedures, schedule impacts and liquidated damages, changes, unforeseen conditions, suspension and termination, limitation on damages, and disputes procedures. A few examples include:

- Project consisted of approximately 5,000 acres to be developed into residential, commercial, and recreational mixed-use. Entire project became stalled because a major tract (1,600 acres) of which had been discovered to be contaminated with unexploded ordinance from use as a World War II-era bombing range. The affected tract was made up of wetlands including wildlife (alligators and snakes). Negotiated the contract between developer and remediation contractor that allowed the land to be privately cleared of the unexploded ordinance, while qualifying the project for government reimbursement upon completion.

Bid Protests

- Represented the successful bidder in defense of a protest on a \$70 million public works contract for the Florida Department of Transportation.

Successfully defended the award to the client, both at the agency level proceedings and in a subsequent administrative trial.

Project Execution

Routinely advises clients on real-time issues that arise during the construction process, in order to proactively prevent or at least minimize subsequent claims including: design errors, changes, delays and schedule impacts, safety, differing conditions, defaults / terminations, and non-payment.

Airport Project - Schedule Impacts & Additional Work

- Represented design-builder client during \$150 million renovation of one of the busiest airports in the country. The project included significant changes to both land-side and air-side operations of the facility. As a result, the project schedule contained a complex sequence of construction operations to minimize disruption to the traveling public and air-line carrier operations. During construction, the project suffered numerous impacts affecting both scope and schedule. The impacts included unforeseen conditions and owner interference. Personally managed interfacing with client's project team to analyze impacts and draft \$17 million schedule impact claim as well as \$7 million additional work/changes claim against the Owner. Then worked closely with the airport's legal counsel and management to develop a series of structured workshops and negotiations that resulted in the successful resolution of all claims during project performance. By using this strategy, was also successful in preserving the parties' business relationship while at the same time assisting the client to achieve a financially rewarding project. In addition, prepared \$5 million claim against client's design professional partner for errors and omissions contributing to both schedule impacts and increased scope.

Design Error / Delegated Design

- Represented general contractor client during construction of open-air concert facility. The complex roof structure was a delegated design by client's subcontractor with load information provided to project's structural engineer for design of supporting concrete columns. During installation discovered supporting concrete columns were structurally inadequate, and dispute arose regarding the related design information and calculations. Protracted litigation over the required re-design of columns would have delayed the pre-sold opening events and resulted in significant damages. Assisted client in generating and presenting claim demonstrating engineer/owner's fault and negotiating payment of additional labor costs to accelerate the work in order to compensate for schedule impacts of redesign which allowed project to open on time.

Hospital Project - Schedule Impacts & Additional Work

- Represented general contractor on construction of \$130 renovation and addition to existing hospital including emergency department, surgical suites, and patient rooms. During construction, the project experienced significant schedule impacts (over 200 days) due to design errors, differing conditions, adverse weather, additional work, and subcontractor performance. The impacts resulted in overlapping multi-million dollar claims between the owner, general contractor client, and two subcontractors. Worked directly with client's on-site project team to evaluate schedule impacts, allocate responsibility, and draft related claims. Then orchestrated a series of workshops, structured negotiations,

and mediations with owner and subcontractors to successfully resolve all claims.

Financing

- Represented private developer constructing a 40-story commercial office building. During construction, the need arose to refinance the project requiring the issuance of a new \$140 million loan. Assisted in terminating the prime construction contract and all subcontracts, negotiated resolution of all pending claims and change orders, execution of financing, title, and closing documents, and re-commencement of the project.

Labor & Employment

- Defended subcontractor client against discrimination claims by union member employees, including defense at NLRB hearings.
- Defended various clients against discrimination claims by former employees, including in EEOC proceedings.

Safety / OSHA

- Successfully defended general contractor client against alleged OSHA Serious Violation arising out of trenching accident on commercial construction project.
- Advised general contractor client and interfaced with OSHA in managing investigation and disposition of a fatality on client's project site.

*Resort Project -
Schedule Impacts &
Additional Work*

- General contractor client built new high-rise luxury hotel with fixed opening date. Owner made changes that impacted the schedule and increased scope of work several million dollars. The client valued its relationship with the owner and wanted to avoid protracted legal dispute. Worked closely with client to compile its claim including the schedule analysis and drafted the written claim narrative establishing legal entitlement. Then utilized a series of ADR conferences with owner's team that led to negotiated settlement of several million dollars for client and preserving on-going business relationship.

*Trial - Wrongful
Termination*

- Defended first-tier subcontractor client terminated in complex scheduling dispute with general contractor in state court. Successfully tried and won verdict for all of client's damages including its attorney's fees and costs.

Project Completion

Assists clients with project close-out issues including the evaluation, preparation, and negotiation of claims, accounting issues and audits, and final payment. Representative matters include:

*Schedule Impacts
Claim*

- Assisted client in the close-out of a public correctional facility. The project suffered numerous and significant scheduling impacts which delayed it approximately 500 days, due primarily to differing site conditions and design errors. Worked directly with client's project personnel (project manager, project engineers, superintendents, and scheduler) as well as an outside scheduling consultant in preparing a formal written claim to the Owner. Drafted written claim (narrative over 100 pages) which set forth the factual and legal basis for the client's claim of over \$8 million. In addition to the written claim, utilized both pre-suit mediation and structured negotiations with the Owner to assist in

successfully resolving this claim without the need for formal litigation.

*Roadway / Bridge
Project – Constr.
Defects*

- Represented general contractor client on roadway project for widening of interstate highway including bridge spanning over a tidal river. The bridge portion required the installation of over 425 poured concrete caissons in the river, each one 5' in diameter and extending to a depth of over 150' below the river bottom. Due to the on-water location, the caissons required a complex yet time sensitive installation process involving both client and its subcontractor. After installation of all caissons but before final completion of the bridge, defects were discovered in the upper portions of certain caissons primarily in the form of pockets filled with spoils. The required repairs were labor intensive and exceeded \$10 million. Worked closely with client's project team and forensic consultants in analyzing and proving the complicated cause of the defects. Prosecuted claim in federal court against subcontractor, and successfully negotiated settlement of client's damages.

*MLB Stadium -
Schedule Impact /
Acceleration Claim*

- Represented public owner client with renovation of its existing stadium in order to meet Major League Baseball (MLB) standards for a team franchise. Prior to my involvement, owner had previously agreed to Construction Manager Not-At-Risk project delivery method which included owner directly contracting with major trade-contractors. The project completion date was driven by previously scheduled high-profile and televised events which could not be moved. When the project experienced delays, the CM accelerated the work by simply issuing T&M receipts resulting in significant cost overruns of approximately \$40 million. Working closely with all project participants, was successful in resolving all claims pre-suit except one. With respect to that single schedule-impact claim, we successfully defended it in court resulting in a favorable negotiated settlement.

*Summary Judgment -
Constr. Lien*

- General contractor client was hired by a developer to construct two new buildings for use as both retail and office condominiums. During construction, developer issued significant changes and additional scopes of work which increased original GMP amount by over 50 percent, but subsequently refused to pay for the changes. After achieving substantial completion, prosecuted a lawsuit against the developer for breach of contract and to foreclose client's construction lien. After initiating the lawsuit, took a proactive approach in negotiating with both the developer and subcontractors to achieve final completion. This approach narrowed the global dispute and allowed focused discovery on remaining issues between client and developer. Based on that targeted discovery, drafted and won a motion for summary judgment against the developer for all of the client's damages (in excess of \$2.5 million) including attorney fees and costs. After perfecting the client's judgment and claim of lien, successfully negotiated with the project's lender and title company for immediate payment of all client damages.

*Inefficiency / Lost-
Labor Productivity
Claim*

- Represented general contractor client in evaluating, defending, and negotiating settlement of a \$10 million inefficiency / lost labor productivity claim asserted by a subcontractor on a new hospital project. Afterwards,

successfully negotiated pass-thru of the majority of the settlement amount to other project participants.

*Trial – Material
Substitution Claim*

- Successfully conducted jury-trial representing subcontractor on material substitution claim arising from state university project. Issues included: interpretation of project specifications and substitution process, and improper use of claim by general contractor/surety.

*Sum. Judgment &
Appeal –
Non-payment*

- Cruise-line operator entered into lease with a public owner which included specific improvements to be made to the existing sea-port facility. General contractor client worked with the operator in generating the scope of work and related schedule which were specifically incorporated into the lease between operator and owner. After construction commenced but before completion of the project, the operator became insolvent leaving client and its subcontractors unpaid. The client was not in contractual privity with the public owner. Frustrated by an unlikely recovery from developer through the bankruptcy process, client requested a creative solution to avoid the loss. To achieve it, sued public owner for negligence arguing that the owner was liable because the applicable public procurement law required a payment bond to be posted for the project, the proper entity to post the bond was the operator in direct contract with the owner, and the owner was negligent for allowing construction to proceed knowing a bond had not been posted exposing client to non-payment. The public owner refused to negotiate but instead aggressively defended our claim. After targeted discovery on key issues, successfully won client's entire claim on summary judgment at the trial court level. The public owner appealed, and after written briefs and a full oral argument, successfully defended client's award on appeal.

On-going Operations

Assists clients with a range of on-going legal needs that typically arise after completion of a project including financing, renting, renovating/selling a property, occupancy issues, latent design or construction defects, ADA issues, and warranty issues. Representative matters include:

*Training / Continuing
Education*

- Created and presented seminars to public and private construction clients as well as construction industry associations at the local, regional, and national levels. Topics include: contract provisions and negotiations, perfecting legal rights, lien and bond issues, risk management and insurance, safety and OSHA compliance, and project documentation.
- Created specific training modules for construction clients and taught varying levels of employees and project participants on numerous legal and risk issues.

*Latent Defects / Water
Intrusion – Developer
Client*

- The client developed a luxury multi-family housing project with approximately 350 units. After leasing the vast majority of the units, the client discovered defects primarily in the building envelope causing significant and wide-spread water intrusion related damage. The repair process was complicated by the occupancy of hundreds of tenants and the legal process was complicated by the timing of when the defects manifested themselves under the applicable law and insurance policies. The contractors and insurance companies refused to

implement proper repairs leaving the client stranded with over \$18 million in damage. Personally guided the client throughout the entire recovery process. First, perfected the client's legal rights against all parties, assisted in developing a repair plan to minimize impact to tenants, assisted in the hiring and management of forensic experts, designers, and contractors for the repairs, and managed the preservation of critical evidence during repairs to ensure success at trial. Next, developed a global legal strategy to address the manifestation of damages which included filing two separate lawsuits against both the builders-risk insurance carrier and general contractor. Efficiently managed both suits containing over 20 separate parties, and successfully forced a settlement which paid for the client's damages.

*Power Plant -
Injunction*

- Represented a Combined Heat and Power (CHP) Cogeneration power plant that sequentially generates both electricity and useful heat from a single energy source. Heat traditionally wasted is instead captured and recycled (as hot water or steam) and provided to other commercial users within a defined geographic area or power district. Client had a contract with an adjacent citrus processing facility for the sale/use of its secondary heat (steam). The client's ability to maintain exclusive rights for its power district was dependent upon meeting certain objectives which in turn relied heavily on consumption its secondary heat by citrus plant. Client learned of rumor that citrus plant was being sold and new owner would change its operations to no longer need steam. Personally drafted and filed emergency complaint for temporary and permanent injunctive relief seeking to stop the pending sale (approx. \$15M) based on theories that contractual rights ran with the land. Successfully obtained temporary injunction without bond stopping sale on eve of its closing. Also successfully defended temporary injunction in subsequent evidentiary hearing which delayed sale long enough for client to make other arrangements under contract, negotiate settlement, and preserve its exclusive rights.

Labor Relations

- Advised and assisted mechanical subcontractor client in opposition to organizing efforts by local sheet-metal and plumbing unions including petitions, campaigns, and defense of election results on appeal.

Design Error

- Owner hired design-builder client to construct new facility. This project's HVAC system was supplemented by the use of thermal-energy storage (ice) generated during low-demand periods and burned during high occupancy or peak demand. The higher initial costs of the complex system were approved based on anticipated financial incentives from local utility provider to Owner if certain system performance goals were met. The system failed to meet those goals and Owner initiated claim against client for lost financial incentives from utility provider, lost revenue during system non-performance, and costs to modify system. Issues in dispute included: value-engineering and operational changes made by Owner, design assumptions and specifications made by mechanical engineer, and installation quality and changes made by mechanical subcontractor. Worked with all parties in dispute to determine causes of failure and allocate responsibility which led to negotiated resolution of all claims.

*Bond Claim –
Creative Theory
Of Recovery*

- This dispute arose from an ocean front condo project. The original general contractor abandoned the project during construction and its performance bond surety refused to fund the project's completion. Later, the second contractor hired by the developer went out of business causing the developer to self-perform the completion of the project. Subsequent to completion, the developer filed an arbitration against the original contractor's performance bond which included estimated costs to repair defects. Unfortunately for the association, the developer and surety settled their arbitration, the developer disappeared with the settlement funds, and the construction defects were never repaired. Before retaining our firm, the association met with other law firms but most advised that the association had no viable legal recourse. Existing reported case law held that the association does not have standing to sue on a performance bond. Rather than concede, I filed suit against the surety on the bond under the novel theory that the association was the "successor" of the developer. The surety filed a motion for summary judgment arguing that because the association was not a named obligee under the bond, the association could not assert a claim against the bond. The surety won that summary judgment at the trial level. Unwilling to give up, we were able to successfully draft and argue a victory on appeal. Not only did the appellate court reverse the trial court, it also adapted our legal arguments holding that the association had rights under the bond. Marseilles Condo. Owners Ass'n v. Travelers Cas. And Surety Co. of Am., 2009 WL 3491016 (Fla. App. 1 Dist. 2009). Faced with this reported decision, the surety agreed to fund a settlement in exchange for the association's consent to the withdrawal of the court's written opinion.

*Arbitration -
Dam Project /
Latent Defects*

- Represented design-builder client that installed a storm-water management system for extreme terrain located on active US military base. After project completion, system failed resulting in multi-million dollar damages to re-design and re-install portions of it. Prosecuted claims against client's designer/engineer and subcontractors. Tried a two-week arbitration hearing and successfully obtained judgement in client's favor.

*Latent Defects /
Water Intrusion -
Public Owner Client*

- Served as lead counsel for public owner client asserting water intrusion / building envelop claim arising out of defective design and construction which caused damages of \$8.5 million. In addition to prosecuting multi-party litigation against construction manager, designer, and contractor, also provided significant oversight of the remediation process including preservation of evidence and damages. Utilized proactive case management tactics that allowed the remediation to timely proceed while limiting attorney's fees of all parties. Also provided oversight of public relations on this high-profile matter which was routinely the subject of local media coverage. Successfully negotiated settlement with all responsible parties to the client's great satisfaction.

Representative Matters As Mediator

Mr. Norris has served as both legal and business advisor to senior management of some of the largest ranked contracting companies in the United States. From that experience he understands the use of mediation and other forms of alternative dispute resolution as a means to efficiently resolve complex disputes avoiding protracted and expensive litigation. Other attorneys and parties began soliciting him to serve as mediator in their separate disputes. In response to that growing demand, in 2008 Mr. Norris became a Florida Supreme Court Certified Civil Circuit Mediator.

Given his extensive and diverse experience in the construction industry, Mr. Norris is naturally well-suited to mediate disputes involving construction, development, financing, and real-estate related matters. As his mediation practice has grown, however, he has increasingly mediated complex business-related disputes including: business torts; non-compete and employment agreements; valuation, sale, and dissolution of entities; professional and fiduciary liability; and insurance claims. To date, Mr. Norris has served as mediator for hundreds of mediations, and is proud to have worked with the participants to successfully settled the vast majority of them. The following summarizes a few of the matters in which Mr. Norris has served as mediator.

Construction

*Design & Constr.
Defects, Resulting
Environmental
Damages*

- The dispute arose from the closure of a phosphate fertilizer manufacturing complex comprised of gypsum impoundments and a network of water collection ponds, encompassing a total watershed of approximately 450 acres. The previous owner/operator was financially incapable of maintaining the integrity of the complex to prevent the release of the ponded 600 million gallons of untreated, acidic process wastewater stored on-site. Ultimately, an engineer was hired to assess the existing conditions and to design necessary mitigative measures. A contractor was then hired to implement those measures, maintain the site, and perform treatment/consumption of the ponded process water to allow a phased closure of the complex. After the mitigative measures were implemented, various leaks of the ponded water occurred primarily from failures in a huge 2.5 million square foot liner. The damages caused by the leaks exceeded \$60 million resulting in claims between the engineer and contractor.

Schedule Impacts

- US Army Corps of Engineers' project for the repair and replacement of a section of levees on the Mississippi River near New Orleans, Louisiana. The project experienced over 700 days of delay due to schedule impacts resulting in flow-through claims between owner, general contractor, and subcontractor. Damages included liquidated damages, extended general conditions, and increased scope of work.

*Design Error /
Prof. Negligence*

- Dispute involving public owner, architect, construction manager, subcontractor, and manufacturer on a state university project. The primary issue in conflict related to design errors that occurred during a complex value-engineering process related to use of prefabricated structural components, but errors were not discovered until a critical stage of construction. Damages included delays (liquidated damages and extended general conditions claims) as well as increased costs to correct the error.

**Business /
Commercial**

*Business
Interruption /
Lost Profits*

- At its core, this was a landlord / tenant dispute arising from storm damage which rendered the majority of the premises unusable. Complicating the dispute however were factors including: the lease failed to either clearly define or was otherwise ambiguous as to responsibilities for property damage, a large portion of tenant's claim included business interruption / lost profits which complicated insurance related coverages, and tenant was a national retailer that had also filed bankruptcy complicating who actually owed the claim and authority to settle.

*Non-Compete
Disputes*

Successfully mediated numerous non-compete disputes across various industries and professions including health-care, entertainment, and personal services.

- Dispute arose between music management/production company and the five members of a teenage pop band assembled by the company. Each band member was under a separate contract with the company containing differing terms. Issues involved included: copyrights, licenses, and royalties for previous music written and recorded, and use of band name and branding materials.

Franchise Dispute

Mediated dispute between franchisor and franchisee for production and sale of medical products in specific geographic area.

Business Dissolution

Mediated dissolutions of various forms of business entities including joint-ventures, partnerships, franchises, etc. Typical issues in resolution include valuation of assets, projections of future earnings, and structuring financial buyouts.

- Dissolution of partnership that manufactures skin-care related consumer products. Issues included ownership of trade-mark rights to confidential formulas for certain products.