

John H. (Buzz) Tarlow

Tarlow Stonecipher Weamer & Kelly, PLLC

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LAW PRACTICE:

Founding Member
Tarlow Stonecipher Weamer & Kelly, PLLC
Bozeman, Montana

Practice Areas: Construction Law; Commercial Law; Corporate Law; Aviation Law; Insurance Law; Litigation

ADMISSIONS:

1986, Vermont and U.S. District Court, District of Vermont; 1989, Montana and U.S. District Court, District of Montana; 1990, U.S. Court of Appeals, Ninth Circuit

EDUCATION:

B.A.: 1981, University of Connecticut (with distinction in Economics, *cum laude*)
J.D.: 1985, Boston University School of Law

PUBLICATIONS AND PRESENTATIONS:

Construction Law Today. Creator and host of the National Podcast of the American Bar Association's Forum on Construction Law

Chapter 16: Termination of Contract. Construction Law Second Edition. Publication of the American Bar Association.

Contract Termination: A Brief Introduction. Presented at Montana State University College of Engineering, Bozeman, MT, November 2017, Bozeman, Montana

In Defense of Lying: The Ethics of Deception in Mediation. Published in the *Journal of the American College of Construction Lawyers*, Summer 2017 issue

Fall 2016 Practicum: Advocacy in Arbitration. Presented at the American Bar Association Forum on Construction Law 2016 Fall Meeting, October, 2016, Chicago, Illinois

Gamesmanship in Mediation: When Does Deception Become Unethical? Presented for the American Arbitration Association, Inc. Webinar, May, 2016

In Defense of Lying: Ethical Issues in Mediation. Presented at the American Bar Association Forum on Construction Law, Fall National Conference, October, 2015 Austin, Texas

50 Shades of Mediation. Presented at the 10th Annual Montana State Bar Construction Law Institute, October, 2014, Bozeman, Montana; University of Kentucky College of Law Construction

Law Institute, Lexington, Kentucky, October 2014; Annual Meeting of the American College of Construction Lawyers, February, 2015, Key Biscayne, Florida

The Legal Issues Arising from Future On-Site Construction Technologies. Presented at the American Bar Association Forum on Construction Law Annual Meeting, April, 2013 Dana Point, California

Construction Law Program for State and Local Government Attorneys and University Counsel, co-sponsored by the American Bar Association Forum on the Construction Industry and the American Bar Association Government and Public Sector Lawyers Division, October, 2012, Boston, Massachusetts

Multiple Party Construction Arbitrations: Contractual and Jurisdictional Issues – Who's In, Who's Out, and Who Decides. Presented at the American College of Construction Lawyers 23rd Annual Conference February, 2012 Laguna Beach, California

Engineers as Expert Witnesses: Practices, Procedures and Pitfalls. Presented at the State of Montana Joint Professional Engineers Annual Conference, November, 2011 Helena, Montana

Coverages, Disputes and Tactics for Survival: Critical Insurance and Litigation Issues and Insights. Presented at the American Bar Association Forum on the Construction Industry - Midwinter Meeting, January, 2009, Bonita Springs, Florida (Served on a panel of experts discussing managing disputes resolution process from the owner's perspective)

ADR in Construction Cases: Mediation and Arbitration Practices, Issues and Problems. Presented at the State Bar of Montana - Fourth Annual Construction Law Institute, September, 2008, Bozeman, Montana

Introduction to Issues Relating to Arbitration in Construction Contracts. Presented at the National Association of Women in Construction - Annual Planning Conference for Region 9, October, 2007, Great Falls, Montana

Current Issues in Construction Law for Engineers. Presented at the Montana Society of Engineers - Joint Engineering Conference, November, 2006, Helena, Montana

Change Orders and Defenses to Written Notice Requirements. Presented at Lorman Education Services, program entitled - *Changes, Change Orders and Changed Conditions in Montana*, February, 2005, Billings, Montana

Dos and Don'ts of Construction Law Arbitration. Presented at the State Bar of Montana annual statewide program, January, 2005, Big Sky, Montana

Montana Construction Lien Laws. Presented at the American Subcontractors of Montana program, June, 2003, Bozeman, Montana; published in *Montana Subcontractor* (The Quarterly Magazine for Montana Subcontractors)

Construction Claims in Montana. Presented at the Lorman Education Services program, June, 2001, Billings, Montana

Contractors' Rights: Protecting Contractors' Rights and New Developments and Pitfalls. Presented at the Lorman Education Services program entitled - *Montana Construction Law: Can This Job be Saved? Creative Strategies for Project Completion and Litigation*, August, 2000, Billings, MT, and August, 2001, Billings, Montana

Arbitration: When Is It Good? When Is It Bad? When Is It Ugly? Published in the *Montana Subcontractor*, December 2000 Issue (The Quarterly Magazine of the Associated Subcontractors of Montana)

Overview of Damages, Insurance Coverage and Attorney's Fees in Construction Cases. Presented at the Montana Trial Lawyers Association (MTLA) - statewide program entitled *Commercial Litigation & Business Torts*, February 6, 1998, Billings, Montana

OTHER BAR/LAW RELATED ACTIVITIES:

Active as construction mediator and arbitrator in the State of Montana and neighboring states

Appointed to the American Arbitration Association Roster of Neutrals, Construction Panel

Fellow of the American College of Construction Lawyers (inducted February, 2010); only ACCL member in State of Montana; elected to serve as member of the Board of Governors from February, 2014 - 2016

Founder of Montana State Bar Construction Law Section

Founder of Montana Construction Law Institute (an annual statewide construction law conference in association with the State Bar of Montana)

AV rating from Martindale Hubbell

Top Rated Alternative Dispute Resolution Attorney by Super Lawyers

Fellow of the American Bar Foundation

American Bar Association Forum on the Construction Industry – Co-Chairperson of National Mid-Winter Meeting (2013) Naples, Florida

American Bar Association Forum on the Construction Industry, Insurance Program, Co-Chair of Chicago 2011 Program; Program Coordinator, Santa Monica 2012 Program

American Bar Association Forum on the Construction Industry - Fellowship Program (Mentor)

American Bar Association Forum on the Construction Industry - Division 1 (Alternative Dispute Resolution) – Chairman of Steering Committee (2010-2012)

American Bar Association Forum on the Construction Industry – Member of Technology Committee (active in organization of American Bar Association Forum on the Construction Industry podcast program)

Montana Interim Legislative Joint Committee of the House and Senate, July 2008 (testified to Committee regarding operation of lien law, insurance and bonding in response to public forum on residential construction defects)

Montana Interim Legislative Joint Committee - Residential Construction Working Group, August 2008 (served as consultant to the Committee regarding proposed legislation concerning residential construction defects)

State Bar of Montana Professionalism Committee's New Lawyers' Workshop 2006, 2010 and 2012, Bozeman, Montana (served on Faculty)

State Bar of Montana - Fee Arbitration Panelist - 18th Judicial District - (appointed to serve as a panel arbitrator for a 3-year term, June, 2009 to June, 2012)

Moderator of the State Bar of Montana Construction Law Institute (2005 through 2014)

U.S. Green Building Council, LEED Green Associate (March, 2012 - present)

ORGANIZATIONS:

- Aircraft Owners and Pilots Association
- American Association for Justice
- American Bar Association Forum on the Construction Industry
- Fellow, American College of Construction Lawyers
- Fellow, American Bar Association Foundation
- Gallatin County Bar Association
- Gallatin County Guardian Ad Litem Program
- Montana Bar Association
- Montana Trial Lawyers Association
- State Bar of Montana Construction Law Section
- Montana Construction Law Institute
- American Arbitration Association Panel Member

REPRESENTATIVE CASES:

Jackson Contractor Group, Inc. v. Avenue C Apartments, LLC, et al.; Jackson Contractor Group, Inc. v. Front Street Partners, LLC

Representation of general contractor in complex claims against owner regarding the construction of 2 residential rental complexes in a seven-figure dollar recovery and settlement of underlying case

Scott Johnson v. Federated Rural Electric Insurance Exchange

Representation of corporate director and officer of utility and internet service provider in lengthy multimillion dollar coverage dispute with insurance carrier leading to successful obtaining of coverage and eventual settlement of underlying case

Key Construction, Inc. v. Persevere, LLC, et al.

Representation of general contractor against surety of defaulting subcontractor resulting in successful settlement.

Pauley Construction, Inc. v. Montana Opticom, LLC

Defense of claims on behalf of owner brought by contractor relating to a payment dispute arising out of various maintenance services

James F. Turner et al. v. The PRG Group, LLC

Prosecution of claim on behalf of homeowner whose multimillion-dollar home was destroyed as a result of subcontractor negligence resulting in multimillion dollar recovery

Scarsella Brothers, Inc. v. State of Montana, Department of Transportation, et al.

Representation of general contractor in connection with complex changed site condition road construction case involving payment claims by contractor and both procedural and substantive counter claims by Department of Transportation

Cikan Architect, PC v. Peter H. Erickson and Cyrese I. Erickson

Defense of claims on behalf of design builder brought by owner relating to billing, accounting and performance issues resulting in successful defense of claim and payment to design builder

R & R Taylor Construction, Inc. v. Montana Opticom, LLC

Representation of building owner in connection with design and construction of internet service provider's computer and operations facility

City of Bozeman v. McAlvain Civil Constructors, Inc.

Representation of City in complex claim against contractor regarding the construction of a municipal wastewater treatment facility resulting in a million-dollar recovery

1804 Operating, LLC v. JN Field Services, LLC

Defense verdict in arbitration of multimillion dollar claim against contractor relating to salt-water pipeline construction in North Dakota

Killion Trucking et al. v. Skanska USA

Defense of national heavy construction firm in multi-party action on surety bond relating to Wyoming interstate highway project

Impact Mechanical, L.L. v. Walsh Construction, Inc. and URS Washington Division, LLC

Montana counsel for national engineering firm in connection with defense of claims arising out of construction of major hydro-electric facility

Barnard Impregilo Healy Joint Venture v. Willis of Michigan, Inc. and First West Insurance, Inc.

Defense of regional insurance broker in multimillion dollar claim arising out of insurance matters in complex mass transit tunneling project in San Francisco, California

MBA Construction Company v. Dry Prairie Rural Water Authority

Represented regional general contractor in arbitration against public water district entity concerning change orders and claims for additional compensation arising out of construction of office/maintenance facility, focusing on issues of geothermal heating system, scheduling and permitting requirements, resulting in arbitrator's verdict in favor of the general contractor

Mobley & Sons, Inc. v. Matt Weaver

Defense of general contractor against claims by subcontractor for additional payments pursuant to work allegedly performed by the subcontractor, resulting in directed verdict granted by Court during the course of the jury trial in favor of general contractor

Caddell Construction Company, Inc. v. The Kulonis Company and Kenneth P. Kulonis

Montana counsel for national general contractor in complex construction dispute at Fort Sill, Oklahoma, involving multi-million dollar claim arising out of design defects in heating and cooling system

GreatHouse Builders, Inc., v. Evan Greenberg, et al.

Represented owners in multiple-day arbitration of claims by general contractor exceeding \$2,000,000 in connection with the construction of a ski resort home resulting in successful defense of claims

Cust-O-Fab, Inc. v. CHS, Inc. and CEntry Constructors & Engineers, Inc.

Montana counsel for oil refinery equipment fabricator relating to project delays, design defects and related issues

Robert M. Lee v. Martel Construction, Inc.; Legere Group, Ltd.

Represented window manufacturer in connection with alleged defect claims in multi-party litigation arising out of the construction of a 50,000 square foot, \$50,000,000.00 residence on a private island in Flathead Lake, considered to be the most expensive private residence ever built in the state of Montana

Big Sky Division 15, Inc. d/b/a Big Sky Plumbing and Heating v. Clark Construction Company, et al.

Represented construction Management Company in connection with multi-million dollar claims by subcontractor for scheduling and related losses at centerpiece ski resort high-rise hotel

Superior Concrete, Ltd., et al. v. Vratsinas Construction, Inc.

Represented national retail facility constructor in defense of claims by multiple subcontractors in week-long arbitration, resulting in successful defense of claims

Haskell Corporation v. Cenex Harvest States Cooperative, Inc., et al.

Montana counsel for regional constructor in claims involving significant renovation of an oil refinery located in Laurel, Montana

William A. Ward d/b/a/ Stonewerx v. Voyager Construction, LLC, et al.

Represented owner in defense of issues arising out of \$800,000 residential masonry contract primarily litigating the issue of pre-lien notice and attorneys' fees leading to the award by the Court to the owner of substantial attorneys' fees

Benton v. Pearson

Represented injured general contractor in personal injury claim resulting in multi-million dollar settlement

Grant v. United States of America

Represented claimant in complex helicopter accident resulting in multi-million dollar settlement

Arrowhead Condominium Association Phases I-IV Unit Owners, Inc. v. State Farm Fire and Casualty Co.

Represented Arrowhead Condominium Association in first-party property damage dispute involving failure of a retaining wall and its effect on a condominium development at Big Sky Ski Resort, resulting in a substantial recovery to the Condominium Association

MONTANA SUPREME COURT CASES:

Leonard ("Duke") Brown v. Yellowstone Club Operations, LLC, 2011 MT 155, 361 Mont. 124, 225 P.3d 205, 161 Lab.Cas. P 61, 162, June 28, 2011 (No. DA 10-0533)

Bunch v. Lancair Intern., Inc., 2009 MT 29, 349 Mont. 144, 202 P.3d 784, 2009 WL 250529, Mont., February 03, 2009 (No. DA 08-0090)

Gierke v. Walker, 279 Mont. 349, 927 P.2d 524, 1996 WL 678682, Mont., November 21, 1996 (No. 96-436)

Mobley and Sons, Inc. v. Weaver, 2009 MT 312, 352 Mont. 396, 218 P.3d 472, September 22, 2009 (No. DA 09-0145)

Sebena v. State, 267 Mont. 359, 883 P.2d 1263, 1994 WL 612808, Mont., November 07, 1994 (No. 94-218)

Lumber Enterprises, Inc. v. Hansen, 257 Mont. 11, 846 P.2d 1046, 1993 WL 33511, 20 UCC Rep. Serv. 2d 774, Mont., February 11, 1993 (No. 92-375)

ACADEMIC EXPERIENCE:

Adjunct Faculty Member, Montana State University, Bozeman, Montana, College of Engineering (2011 to present)

Montana State University, College of Engineering – Professional Masters of Science and Engineering Management Program – Member of Academic Committee creating curriculum (September 2011 to 2014)

Lecturer, Montana State University, College Of Engineering - Engineering Ethics & Professional Practice (2006 to present)

Guest lecturer, Montana State University, College of Technology – Aviation Law

AWARDS:

2004 Pro Bono Publico Award - 18th Judicial District - Pro Bono Project (awarded for law firm's representation of guardian ad litem in parental rights termination proceedings)

2014 Construction Law Section Appreciation Award (In recognition of exemplary contributions to the Construction Law Section of the State Bar of Montana from 2005 to 2014)

CHARITABLE ORGANIZATIONS AND COMMUNITY SERVICE:

Gallatin County Friends of the Law and Justice Center

Bozeman Help Center (24-hour crisis counseling service) (Former President)

Family Promise of Gallatin Valley, Inc. (Former Board Member and Chairman)

Gallatin County Chapter of MADD (Founding Board Member)

Greater Gallatin United Way (Long-standing Board Member and former Chairman)

Montana Council of the Boy Scouts of America (former Cub Scout Leader and Assistant Scoutmaster)

OTHER ACTIVITIES:

Licensed pilot, certified ski instructor, electric and acoustic guitar