

Jon Bergman represents a variety of owners, general contractors, subcontractors, and vendors in construction disputes involved in diverse construction projects. He has litigated or arbitrated an array of matters involving the defense and pursuit of claims for breach of contract, unjust enrichment, extended performance, productivity losses, defective work, defective design, liquidated damages, cardinal change, etc.

Mr. Bergman is the author of the chapter on express and implied warranties in *The Practitioners Guide to Colorado Construction Law*, Continuing Legal Education in Colorado, Inc. and has presented topics for CLE programs, including programs for architects and engineers.

Mr. Bergman has been selected for inclusion in *Colorado Super Lawyers*, which is published by Thomson Reuters, since 2006.

Mr. Bergman is a member of the American Bar Association (Litigation and Construction Sections) and the Denver Bar Association.

REPRESENTATIVE CASES

- Represented two of the top five gold producers in the world in a dispute against a global engineering firm that had been engaged to provide engineering and related professional services as part of a \$100 million project to design and construct a high-grade ore processing mill in Colorado. The services provided were defective on multiple levels, including the engineering and design of the mill building (a substantial structure about nine stories tall and the footprint of a football field), and specification of certain equipment used to process ore. After a three-week arbitration hearing that included testimony from more than 20 witnesses, numerous technical experts and 250 exhibits, the arbitrators issued an award affirming the claims brought by the gold producers.
- Represented the installer of a mechanically stabilized earth retaining wall (“MSE Wall”) at a university in New Mexico. Although the MSE Wall failed, Mr. Bergman’s client contended that it complied with the specifications, including the proper installation of geo-grid and ties. The client’s geotechnical expert was able to establish that the compaction and other standards were met, that the failure was caused by the intrusion of excess moisture, and that the architect had specified an improper Proctor Test. After a multi-day arbitration hearing in New Mexico, the arbitrator issued an award that vindicated the positions taken by Mr. Bergman’s client.
- Represented the general contractor of an ethanol project in a dispute between and among the design engineer and the owner, involving design process failures and flaws, claims of diminished production capacity, and the failure of the cooling tower. The discovery effort was extensive and involved substantial document review, witness interviews, and depositions. The expert witnesses touched upon multiple disciplines, including design, chemical and process engineers, chemists, economists, construction, and damages. After a multi-week arbitration involving the presentation of numerous fact and expert witnesses, the matter was favorably resolved for Mr. Bergman’s client, which received a multi-million dollar payment.
- Resolved claims brought against a client by a subcontractor engaged to fabricate tank bottoms for grain hoppers at a port facility. The subcontractor asserted claims for weather delays, lost productivity due to trade stacking, and other claims. The case resolved on favorable terms prior to the arbitration hearing.
- Represented an EPC contractor in a dispute with the Metro North Commuter Railroad in the United States District Court for the Southern District of New York. Mr. Bergman’s client sought to obtain payments owed under a construction contract. The Railroad contended that the right to such payments had been waived under the contract and sought to dismiss the contractor’s claims on that and other grounds. Judge Kaplan denied the Railroad’s motion to dismiss, and the matter was resolved thereafter.
- Resolved claims brought by a contractor engaged to install a 140-megawatt power generation facility consisting of three simple-cycle General Electric LM6000 combustion turbines, modular control buildings, diesel fuel and water storage tanks, mechanical buildings, electric control buildings, and an electric switchyard in Iowa. The contractor experienced construction delays and impacts due to late IFC drawings, late delivery of equipment, an increased scope of work (e.g., piping changes, revised mechanical and electrical drawings), extended performance, and productivity losses. The matter

- settled on favorable terms before an arbitration hearing.
- Obtained an arbitration award for a mason subcontractor based on an improper termination under the contract before performance began. The stated grounds for termination were rejected by the arbitrator and the client was awarded fees, costs, lost profits, and interest.
- Resolved claims brought by a subcontractor performing work on an oil refinery in Wyoming for extra work, field change notices, delay damages, and lost productivity damages. As part of the disputes, the contractor advanced counterclaims for alleged project delays, liquidated damages, and recovery costs, but those claims were abandoned after detailed claim with extensive back-up support was presented.
- Vindicated a client's position in an arbitration hearing by defeating claims brought by a subcontractor hired to drill caissons or piers to support plant equipment at a gas processing plant in Wyoming. The geotechnical report did not identify any exceptional subsurface conditions, but the subcontractor claimed to have encountered subsurface rock exceeding the unconfined compressive strengths set forth in the contract. After a one-week hearing, the arbitrator denied the subcontractor's claims in their entirety.
- Favorably settled claims brought by a contractor engaged to remove an existing control system at a Wyoming refinery and install a new control system on a hot cut-over basis. The subcontractor encountered delays and difficulties performing its work, which had to be done on a hot cut-over basis, because the design and other drawings were delayed. Before trial, the case settled on favorable terms.
- Recovered monies owed to an infrastructure contractor after the owner became insolvent. The representation involved filing mechanic's liens on behalf of the client, and the initiation of foreclosure proceedings in Grand County, Colorado. The matter was successfully resolved before trial.
- Defended claims brought against a client engaged to install pipeline infrastructure and other utilities with respect to a residential development in Colorado. Before this work was completed, the owner became insolvent and the lender took over the project. The lender asserted claims against the client for trespass and nuisance for creating an earth pile (at the owner's direction) that was estimated to be 27,000 cubic yards. The claims were successfully resolved and dismissed by agreement before trial on favorable terms.
- Recovered funds owed to a subcontractor for the installation of forcemains on a utilities infrastructure project. The subcontractor's cost to perform increased due to design flaws and changed conditions. Before initiating litigation, the parties agreed to a tolling agreement and mediated their disputes. The matter resolved on terms favorable to the subcontractor.
- Represented a general contractor engaged to construct a hospital. The scope of the representation included negotiating a series of change orders and close-out of the project.
- Represented a client during the construction phase of a data center in California. The scope of representation included participation and attendance at weekly construction meetings and strategic advice during the construction process.
- Represented the owner in a dispute with the contractor regarding a series of construction defects and other contract breaches. The matter was favorably resolved after mediation.
- Represented an HVAC contractor in a mechanic's lien foreclosure against the owner of a project in Steamboat Springs, Colorado. After the project financing fell through, the project stalled, and numerous mechanic's liens were filed. The matter resolved favorably after demonstrating the entitlement to and amount of the payment owed for work performed and improvements made.