

Jack W. Fleming

Partner, Orange County Office

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PRACTICE GROUPS

- Construction
- Real Estate
- Litigation
- Business Litigation

EDUCATION

University of Michigan, B.S., *Industrial Engineering magna cum laude*, 1972

Cornell University, Doctor of Law, 1975



PROFESSIONAL SUMMARY

Jack W. Fleming is a partner in the firm's Orange County office where he serves as Chairman of the construction law practice. He specializes in construction and real estate law with an emphasis in the investigation, analysis, negotiation, litigation, arbitration, mediation and settlement of all types of construction disputes. .

Throughout the past 35 years, Mr. Fleming has developed a particular expertise in the handling of complex claims and disputes involving public works and commercial construction projects. He is intimately familiar with issues relating to disruptions, delays, design errors, extra work directives, constructive changes, acceleration and default terminations that typically arise in construction disputes. He has been personally involved in a wide variety of construction projects, including airports, bridges and highways, university and government buildings, subway and light rail construction, power plants, hospitals, prisons, convention centers, parking structures, hotels, theme parks and office buildings.

Mr. Fleming has been lead counsel on a number of high profile construction cases involving public

works projects. Mr. Fleming recently served as lead counsel for the FCI/Fluor/Parsons Joint Venture, the design-builder for the \$600 million Exposition Light Rail Line project located in Los Angeles. Mr. Fleming assisted the joint venture in resolving more than \$100 million of claims concerning this project. During this process, a number of extra work, design and delay claims were arbitrated before a Disputes Review Board. One of the cases he handled for the joint venture involved the defense of a subcontractor's claim for prompt payment penalties. This case resulted in a favorable decision recently issued by the Court of Appeal. *Blois Construction, Inc. v. FCI/Fluor/Parsons*, (2016) 245 Cal.App. 4th 1091.

He also served as lead counsel for the general contractor in a complex case concerning the construction of the John Wayne Airport in Orange County. In this matter, the contractor asserted more than \$30 million of claims for extra work, design defects, delays and acceleration involving the construction of a new Terminal Building, an elevated roadway and an adjacent parking structure. One of the unusual aspects of this project was a redesign of the structural steel in the Terminal Building following the award of the construction contract, resulting in a multitude of design changes and coordination errors.

Mr. Fleming represented the Port of Los Angeles in a dispute concerning the construction of a lift bridge over the Cerritos Channel. This case involved more than \$40 million of contractor claims for extras and differing site conditions, as well as allegations of False Claims Act violations asserted in a cross-complaint. After successfully litigating the issues raised in the cross-complaint before the Court of Appeal, resulting in a published decision entitled *Kajima Engineering and Construction, Inc. v. City of Los Angeles*, (2002) 95 Cal.App. 4th 921, the case was resolved in a successful manner for the Port.

Mr. Fleming has obtained favorable results for his clients in numerous other cases. In one matter which resulted in a reported Court of Appeal decision entitled *Pacific Custom Pools, Inc. v. Turner Construction Co. and Universal City Studios, Inc.*, 79 Cal.App. 4th 1254 (2000), the Court dismissed a \$2 million claim brought by a subcontractor against a theme park owner, Universal Studios, and the general contractor due to a suspension in the contractor's license. In a similar case, the California Supreme Court dismissed a subcontractor's claim valued at more than \$1 million due to the contractor's failure to obtain a license prior to the start of the project. *MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Co., Inc.*, 36 Cal.4th 412 (2005). This case has been widely publicized, and is cited as the definitive authority concerning the enforcement of the contractor licensing statute.

Mr. Fleming has had significant experience as an arbitrator and mediator of construction disputes. His background in engineering provides an added dimension, which enables him to provide incisive advice and input in the dispute resolution process. Mr. Fleming is a member of the National Panel of Construction Arbitrators for the American Arbitration Association, and the Panel of Arbitrators for the Office of Administrative Hearings for the State of California.

Mr. Fleming is currently serving on the Construction Advisory Board for the Diocese of Orange overseeing more than \$100 million of construction work, and is the President of the Cornell Alumni Association of Orange County. Mr. Fleming is a member and past chairman of the Associated General

Contractors of California Legal Advisory Committee.

PUBLICATIONS

BUSINESS LITIGATION POSTING

- Is The Flintco Case A Setback For General Contractors? 10.14.2016

ARTICLES

- "Is the Flintco Case a Setback for General Contractors?" California Construction Law Reporter, Thomson Reuters 11.01.2016
- "A Red Alert for Contractors: The Importance of Maintaining a Valid Contractor's License At All Times," California Construction Law Reporter. 04.01.2006
- "Total Cost Claims and the False Claims Act," CMAA Legal & Legislative E-News 04.01.2004
- "The Coming of Age of the False Claims Act," CM Advisor 03.01.2002
- "Cardinal Changes," Construction Change Order Claims, Wiley Law Publications 01.15.1994
- "Bid Protest Suits in Federal Courts," The Government Contractor Briefing Papers, No. 83-4 04.01.1983
- "A Practical Guide to the Estimation of Damages in Complex Litigation," Computer/Science Journal, Vol. II 01.30.1981
- "Calculating Damages in Complex Litigation," Legal Times of Washington 11.01.1979

DECISIONS

- Flintco Pacific Inc. v. TEC Management Consultants, Inc., (2016) 1 Cal.App.5th 727 06.21.2016
- Blois Construction, Inc. v. FCI/Fluor/Parsons, (2016) 245 Cal.App.4th 1091 04.12.2016
- United States v. Sequel Contractors, Inc., (2005) 402 F.Supp.2d 1142 00.14.2005
- MW Erectors, Inc. v. Niederhauser Ornamental and Metal Works Company, Inc., (2005) 36 Cal.4th 412 07.14.2005
- Kajima Engineering and Construction v. City of Los Angeles, (2002) 95 Cal.App.4th 921 02.05.2002
- Pacific Custom Pools v. Turner Construction Co., (2000) 79 Cal.App.4th 1254 04.19.2000
- Appeal of Blount Brothers Corporation, 88-3 BCA ¶20,878 05.19.1988
- Appeal of Telline Radio, Inc., 78-1 BCA ¶12915 11.18.1977
- Appeal of Jackson-Swindell-Dressler, 76-2 BCA ¶12,222 09.22.1976

ADMISSIONS & PROFESSIONAL ASSOCIATIONS

- State Bar of California
- District of Columbia Bar
- State Bar of Virginia
- United States District Court for the Southern, Central, Eastern and Northern Districts of California
- National Panel of Construction Arbitrators for the American Arbitration Association, Member
- Associated General Contractors Legal Advisory Committee, Member and Past Chairman
- Tau Beta Pi Honorary Engineering Fraternity, Member

- Mr. Fleming is currently serving on the Construction Board for the Diocese of Orange overseeing more than \$100 million of construction work.