

## **STEVEN D. HEDGES**

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Steve Hedges is a construction lawyer, business litigator and mediator and arbitrator. He also provides general business counsel, risk avoidance and project delivery advice, and contract drafting. He represents contractors, construction owners, manufacturers, architects and engineers, and business and industrial plant owners. Mr. Hedges is an American Arbitration Association arbitration and mediation panelist and a certified North Carolina Superior Court mediator, North Carolina Editor of Lien Law Online, and an active member of the Carolinas AGC.

Mr. Hedges' litigation, mediation and arbitration practice involves construction and design matters and disputes. Because of his 36 years of construction litigation experience, he is often asked to provide counsel and advice on legal and general business matters to contractors, design professionals, owners, and others involved in the construction industry.

Mr. Hedges earned a Bachelor of Architecture, magna cum laude, from Virginia Tech. He received his Juris Doctor from Wake Forest University School of Law, where he served on the editorial staff of the Wake Forest Law Review.

Mr. Hedges is licensed to practice law in North Carolina, Virginia, and New York. He has appeared as special counsel in many additional jurisdictions.

### **REPRESENTATIVE MATTERS**

Recovery in litigation of \$1.2 million from public owner, prior site contractor and project design team for differing site conditions and delay on a West Virginia school.

Pre-arbitration hearing recovery of \$1 million for lost productivity and delay on a large West Virginia camping facility. Issues were lack of site access due to late permits and successful use of measured mile lost productivity calculation for the repetitive construction of many identical bath houses.

Recovery of several millions of dollars for differing site conditions and defective cofferdam design on a major bridge replacement project on the Hackensack River, NJ. Issues involved differing site conditions encountered in the river bed overburden and incompetent rock strata during the placement of drilled foundation shafts. Also improper design leading to the catastrophic failure of floating cofferdam structures.

Successful defense of defective work and delay claims against roofing contractor on a Virginia Art Museum.

Recovered, through mediation and negotiation, \$8.5 million in payment, extra work and acceleration claims on a major Delaware River bridge rehabilitation project. Issues were the failure to coordinate elevations and designs of roadway and bridge pier caps.

General representation and claims avoidance for the contractor for a large eastern North Carolina Interstate Highway Project.

Multiple claims, disputes and contract drafting issues for deep foundation specialists, including driven excavated shafts, augered piles, driven piles, grade beams, sheet piling, pipe piling and support for excavation.

Drafting of design/build general contract, associated subcontracts and vendor purchase agreements for a large wood pellet plant incorporating commercially untested technologies.

Prosecution of claims for self-dealing by limited liability partner in connection with a large program of North Carolina solar energy farms.

Successful avoidance of claims of defective design, allegedly resulting in building slab water intrusion, brought by a North Carolina Fire Department.

Drafting of Design/Build contract for the delivery of a private equity power generation facility in Brooklyn, NY.

Defense of safety issues on the construction of a large replacement bridge on the coast of North Carolina.

Successful negotiation to obtain engineer's financial contribution to concrete reinforcing steel cost overruns on a Metro New York ferry terminal. Recovery required establishing the reasonableness of design-build contractor's reliance on engineer's representations as to amount of reinforcing steel required.

Mediation recovery for a grading subcontractor of large extra work and overtime costs to remove undisclosed contaminated and unsuitable soils on a restaurant project in North Carolina.

Drafting of the design subcontract between a design-build joint venture and engineering team for a major bridge replacement project located on the Brooklyn-Queens Expressway, Brooklyn, NY.

Recovered for interiors prime contractor, from owner's property insurance, about \$1 million dollars in damages to interiors work sustained on a NC Courthouse.

Successfully established the interiors contractor, as an additional insured under the builder's risk policy, was entitled to recover for damage to finished interior work by other trades.

General advice and contract drafting for a program of developing wind power projects.

Successfully recovered, through private initial mediation, \$28 million withheld from design-build contractor for a power distribution project located between New Jersey and Long Island, NY.

Successfully recovered, through mediation, fire insurance claim for a North Carolina Church.

Successful trial in equity to establish existence of 70 year old discontinued Virginia state road for purposes of achieving access to timber lands. Trial required showing that opposition expert witness was not qualified and failed to abide by accepted standards of practice.

Litigation recovery on behalf of general contractor of \$900,000 of costs to correct defective work on a NC Church. Recovery had against owner's wrap-up property insurance, Subcontractor's CGL policy and general contractor's CGL policy (containing a rework endorsement). Substantial additional recovery against owner who withheld payment and thwarted insurance claim, on showing that withholding and claim obstruction was unfair trade practice where general contractor was insured under owner's policy

Recovery in mediation against North Carolina hospital architect of extra costs to correct omitted design and associated delay damages.

Contract drafting and general project delivery advice for a waste-to-energy project located in U.S. Virgin Islands.

Hundreds of successful collection actions and mechanics lien filings for general contractors and subcontractors.

Recovery in mediation against the project design team and its insurers of \$4.5 million dollars of extra cost, delay and damages claims by the owner and two prime contractors arising from the construction of an Alaska high rise hotel.

Successful litigation to collect lost profits and damages from an international licensee for breach of a medical device manufacturing, distribution and sales agreement.

Chief trial counsel for large Western U.S. municipality seeking recovery of environmental response costs in private action under CERCLA. Through two rounds of Federal litigation, settlements obtained with over 180 parties without the need for trial.

Cash recovery exceeded \$195 million. Commitments to pay future costs exceeded \$450 million.

Successful litigation defense of New York pharmaceutical company from landfill CERCLA claims.

Recovered \$2 million in claims from a North Carolina university for extra construction costs incurred because of errors and lack of coordination in the design of an alumni hall.

Recovery from owner, in mediation, of general contractor's \$1.4 million payment, extra work and delay claims arising from construction of a NC retirement village delayed one year in completion. This case required showing that the architect's design was defective and late. It also involved successful defense of a large number of defective work claims.

Counsel and representation to a NC county government regarding a poorly designed \$47 million courthouse and jail. Representation resulted in a "wrap-up" of all contractor claims for approximately 28 percent of sums claimed and commitments to an expedited completion schedule. Extra costs to complete were obtained, through negotiations, from architect's E&O insurer.

Successful summary judgment prevailing over insurer's denial of \$15 million claim for foundation collapse on Hawaiian resort. Recovery required the avoidance of subsidence exclusion.

Successful counsel and representation of coastal NC County to anticipate and avoid general building contractor's \$2 million extra work and acceleration claims allegedly caused when a separate prime contractor defaulted in the first month of construction. Retained as soon as problems arose and assisted the County to manage, document and complete the project with no grounds for extra claims.

Development of joint venture EPC agreements and contracts, including private equity funding terms, for power and transportation projects.

Established, at trial and on appeal, the Virginia construction law precedent that the party who commits the first breach of the contract is not entitled to enforce the contract. Ruling barred a general contractor who had not paid a sub from pleading a risk of loss clause as defense where the project was destroyed by fire.

Where a corporate developer signed a construction contract for a hotel, but then subsequently syndicated the project through a limited partnership, established, on certiorari appeal, Maryland authority that the limited partnership, as de facto successor, is entitled to enforce and make claims under a contractual arbitration clause.

Successful representation of Virginia regional transportation authority in regard to the collapse, flooding and subsequent redesign and completion of regional transportation

facility. Also, successful defense of authority in personal injury action arising from collapse.

Sustained, on appeal, dismissal of construction worker personal injury lawsuit against a Virginia Authority, on grounds recovery is limited to Workers Compensation benefits where the construction is an exercise of the "trade, business or occupation" of the Authority.

Successful defense of dozens of malpractice claims against architects and engineers.

General advice to architects and engineers regarding risk avoidance and limitations of liability exposure.

Development of standard form agreements for national engineering and environmental firms and the Construction Management Association of America.

## **EDUCATION**

Bachelor of Architecture, Virginia Tech, 1979, magna cum laude

Juris Doctor, Wake Forest University School of Law, 1982. Editorial Board, Wake Forest Law Review.

Mediation Training, Duke University Private Adjudication Center, 2002

Arbitration Training, American Arbitration Association, 2009

## **PROFESSIONAL AFFILIATIONS**

Carolinas AGC  
American Bar Association  
ABA Forum Committee for the Construction Industry  
North Carolina Bar Association  
Virginia Bar Association

## **SELECTED REPORTED DECISIONS**

*Cleveland Construction Co., v. Fireman's Fund Insurance*, 819 F.Supp. 2d 477, (W.D. NC. 2011).

*John S. Clark Company, Inc. v. Travelers Indemnity Company of Illinois*, 359 F.Supp.2d 429 (M.D.N.C. 2004).

*State by and through McGraw v. Imperial Marketing*, 506 S.E.2d 799 (W.Va. S. Ct. 1998).

*RPR & Associates v. O'Brien/Atkins Associates, P.A. et.al.*, 921 F.Supp. 1457 (M.D.N.C. 1995).

*Federal Insurance Co. v. Starr Electric Company*, 410 S.E.2d 684 (Va. 1991).

*Crown Oil and Wax Company of Delaware, Inc., et al. v. Glen Construction Company of Virginia, Inc.*, 578 A.2d 1184 (Md. 1990).

*Garcia, et al. v. Pittsylvania County Service Authority*, 845 F.2d 465 (4th Cir. 1988).

## **PUBLICATIONS & SEMINARS**

Co-Author, Panelist and Presenter, "Back from the Brink: can we solve problems or just read contracts?" Construction Superconference, San Francisco, California, December 2007.

Co-Author, Panelist and Presenter, "It's About Time: The Project Schedule – management tool or ground rules for the blame game?" Construction Superconference, San Francisco, California, December 2006.

Co-Author, Panelist and Presenter, "Design-Build, Same Old Bonnet, or New Hat" Construction Superconference, San Francisco, California, December 2005.

Co-Author, Panelist and Presenter, "Getting the Designer Out of the Ivory Tower," Construction Superconference, San Francisco, California, December 2004.

Editor, Lien Law Online, North Carolina, Construction Publications, Inc.

Panelist and Presenter, The Construction Executive Conference, Greensboro and Raleigh, North Carolina 2000 -- 2006.

"Construction Contracting For Public Entities in North Carolina." Lorman Education Seminar, Greensboro, North Carolina, August 2004.

"North Carolina Law for Design Professionals." Lorman Education Seminar, Greensboro, North Carolina, February 2003.

"North Carolina Construction Law: A Blueprint for Success in the Construction Process," Lorman Education Services, April 2000

Author and Editor, Construction and Design Law, Michie/LEXIS, 1987-1998.