

Resume

Edward B. Lozowicki, Esq.

Profession	Full-time Arbitrator and Mediator
Career History	Partner, Sheppard Mullin Richter & Hampton LLP, 2005-2012; Partner, Coudert Brothers LLP, 1995-05; Partner, Pettit & Martin LLP, 1978-95; Senior Counsel, Owens-Corning Fiberglas Corporation, 1971-78.
Summary Of Experience	American Arbitration Association arbitrator for over 30 years. Served as panel chair, panel member or sole arbitrator, in many and varied arbitration cases through hearing and award including: construction claims, energy contract disputes, real estate and commercial contract disputes. Acted as counsel or mediator in numerous mediations involving the same areas of law. While in private practice, represented clients in arbitration (domestic and international), mediation and litigation of cases in the above areas of law. Tried many cases for over 40 years before federal and state courts, juries, arbitrators and administrative agencies.
Alternative Dispute Resolution Experience	<p>American Arbitration Association: Member of National Panel of Commercial, Construction, and Energy Arbitrators, and Member of its Large Complex Case Panel.</p> <p>Financial Industry Regulatory Authority (FINRA): Neutral Dispute Resolution Arbitrator.</p> <p>International Institute for Conflict Prevention and Resolution (CPR): Member of General Commercial Panel.</p> <p>California Office of Administrative Hearings: Member of Active Arbitrator Panel for Public Works Contracts.</p> <p>Adjunct Professor of ADR Law, School of Law, Santa Clara University.</p> <p>Adjudicated numerous construction, energy, real estate and commercial cases through hearing and award. A sampling of representative matters follows:</p> <ul style="list-style-type: none">● <i>Geothermal Drilling Project, The Geysers, California</i>: Acted as sole arbitrator in contract dispute between owner and developer of geothermal wells.● <i>Cogeneration Plant, Long Beach, California</i>: Chair of three-arbitrator panel in dispute over tax and contract issues between the Seller and Purchaser of Cogeneration Plant.● <i>Juvenile Detention Center, Los Angeles, California</i>: Sole arbitrator in dispute over claims and damages for change orders, delay and disruption between County and general contractor.● <i>Gas Fired Power Plant, Chicago, Illinois</i>: Member of three-arbitrator panel in dispute over termination and damages between EPC contractor and subcontractor.● <i>Shopping Mall, San Francisco</i>: Member of three-arbitrator panel in dispute between owner/builder and contractor regarding claims for delay and acceleration on new shopping mall project.● <i>Energy Marketing Contract</i>: Chair of three-arbitrator panel on dispute over termination of power supply contract between Energy Service Provider and manufacturer/customer.● <i>Industrial Building, Hayward, California</i>: Sole arbitrator in dispute between lessor and lessee of real estate regarding specific performance of lease/option and related damages.● <i>Big Box Superstore, Antioch, California</i>: Sole arbitrator in dispute between general contractor and subcontractor regarding termination and defective workmanship issues.● <i>Residential Subdivision, San Jose, California</i>: Sole arbitrator in dispute over real estate development losses between joint venture partners.● <i>Shopping Center, Fremont, California</i>: Sole arbitrator in dispute over change in site conditions between contractor and subcontractor.● <i>Luxury Residence, San Jose, California</i>: Sole arbitrator in dispute between homeowner and general contractor regarding claims and counterclaims for termination, over billing, delay and defective work on project.

Legal Experience

LITIGATION: While in private law practice represented business clients in litigation and arbitration of diverse cases including construction, energy, commercial, real estate, employment, and government contract disputes. Tried numerous cases for over 40 years before federal and state courts, juries, arbitration tribunals, and administrative agencies. As trial counsel litigated issues such as contract termination, enforcement of security interests under the Uniform Commercial Code (UCC), letters of credit, specific performance of option agreement, breach of real estate lease and purchase agreements, relief from stay in bankruptcy, wrongful termination of employment, business fraud, unfair competition interference with prospective economic advantage and other business torts.

CONSTRUCTION: Represented contractors, developers and owners in negotiation and drafting of cost-plus, design-build, EPC (domestic and international), GMAX and other forms of contracts. Tried many cases on diverse private and public works contracts involving issues such as delay, disruption, acceleration, extra work, differing site conditions, construction defects, mechanics lien and bond claims, bid protests, "Spearin Doctrine" claims, prevailing wage and False Claims Act allegations. Represented national companies in contract negotiations or litigation of "mega-projects" such as the Trans-Alaska Pipeline, the Haj Pilgrimage Terminal in Jeddah, Saudi Arabia, the CEM Zinc Mining Facility in Imperial County California, and County Hall of Justice, San Jose, California. Represented project sponsors in international arbitration of claims on infrastructure projects in Libya, Pakistan, and Hong Kong under ICC, ICSID and CIETAC rules. Project experience includes highways, bridges and undersea tunnels; nuclear, geothermal, fossil and cogeneration power plants; oil and gas pipelines and power transmission lines; prisons, hospitals, and schools; refineries, LNG, chemical and industrial plants; high-rise office, apartment and condominium projects; military bases, ship-building and missile projects.

ENERGY: Represented industrial users in regulatory proceedings before Public Utilities Commission in gas and electric rate-making proceedings, and rule-making cases regarding conservation programs. Represented developers and operators of alternative energy projects in PUC regulatory proceedings for the implementation of PURPA and FERC regulations regarding power purchase terms and conditions, and project development milestones; and complaint proceedings for violation of PPA's. Advised developers regarding transmission rules of the Independent System Operator (ISO), tariff rules for interconnection of new projects to the grid, and permit requirements of local agencies. Negotiated dispute regarding the purchase and sale of "green energy" credits from biomass plant. Represented owner/operators of alternative energy plants in negotiation or litigation of power purchase agreements, wheeling and fuel purchase contracts and interconnection agreements. Issues in litigation included: contract termination, plant de-rating, price escalation, "claw back" provisions, output ("take or pay") clauses, business fraud and unfair competition law. Relevant projects included geothermal, solar, wind, cogeneration and small hydro plants.

COMMERCIAL/REAL ESTATE/ GOVERNMENT CONTRACTS: Represented industrial, aerospace and microchip companies in the litigation of a variety of commercial and real estate contracts such as vendor-purchaser agreements, leases and real estate purchase and sale and option agreements. Issues included enforcement of UCC security interests, relief from stay in bankruptcy, breach of warranty, specific performance of lease/option agreement, and defense of mechanics lien and stop notice claims. Negotiated and litigated claims for equitable adjustment with federal, state and local agencies for issues such delay, disruption and acceleration, changed conditions and False Claims Act allegations. Litigated bid protests and prevailing wage claims in administrative hearings and in court. Advised clients on regulatory issues such as OSHA citations, Davis-Bacon compliance, and environmental regulations.

CORPORATE/LABOR/EMPLOYMENT: Served as in-house corporate counsel for international building products company. Represented several operating divisions in diverse legal matters involving: negotiation and drafting of vendor-purchaser and real estate contracts and leases, credit facilities, domestic and international construction contracts and other

agreements. Represented company in arbitration of grievances and wrongful discharge claims under collective bargaining agreements; in Unfair Labor Practice and Union Representation proceedings before NLRB; and in OSHA citation cases. Advised company on environmental compliance regarding air, water, and solid waste regulations. Held security clearance from U.S. Department of Energy.

**Alternative
Dispute
Resolution
Training**

Speaker, Dispositive Motions in Arbitration, AAA 2015; Guided Choice: Innovations in Mediation to Get Better Settlements at Less Cost AAA Webinar: 2014; Exceeded Powers: Recent Trends in Challenging Arbitrator Authority, AAA Webinar: 2014; Managing the Costs of Exchanging ESI, AAA Webinar, 2013; Essential Mediation Skills for the New Mediator, AAA 2013; What's a Respondent Like You Doing in a Place Like This? Confronting Arbitrability and Jurisdiction Issues in Arbitration, AAA Webinar 2013; Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, AAA 2012; Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, AAA 2012; Maximizing Mediation: How to Use Mediation Effectively to Resolve Disputes and Obtain Good Results, AAA/AGC, 2012; Best Practices in Franchise Arbitration, AAA Webinar, 2011; Dealing With Delay Tactics in Arbitration, AAA 2009; Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics, AAA 2007; Arbitration Awards: Safeguarding, Deciding & Writing Awards, AAA 2006, 2004; Construction Arbitrator II Training: Advanced Case Management Issues, AAA 2002; Construction Industry Arbitrator Training, AAA 1997; Faculty, Basic Arbitrator Training, AAA 1990; Various other ADR training, 1981-89.

Honors

Award for Distinguished Service in Pursuit of Justice, St. Thomas More Society of Santa Clara County, 2013; Recommended Lawyer for Construction Law, PLC Which Lawyer, 2010-2012; Who's Who Legal: California, 2010.

**Professional
Licenses**

Admitted to the Bar: California state courts, 1970; U.S. District Court, Northern, Central, Southern and Eastern Districts of California, 1978; and U.S. Court of Appeals, Ninth Circuit, 1984.

**Professional
Associations**

American Bar Association (Dispute Resolution Section and Construction Industry Forum); Associated General Contractors of California (Legal Advisory and Legislation Committees); California Dispute Resolution Council; Board of Visitors, School of Law, Santa Clara University; and Board of Fellows, Santa Clara University

Education

St. Joseph's University (AB); Santa Clara University (JD).

Publications

BOOKS

- *"Binding Arbitration Of Contract Disputes In California"* (American Arbitration Association 1988)
- *"Contracts, Claims, and Dispute Resolution"* Construction Accounting Deskbook (CCH, 2005)
- *"Mechanics' Liens, Construction Bonds And Stop Notices"* (Sheppard Mullin, 2012), (Co-author)
- *"Presenting And Defending Construction Claims In California"* (Lorman, 2004), (Co-author)
- *"Design-Build & Turnkey Construction in California"* (Lorman 2002), (Co-author)

ARTICLES

- *"Parsing Arbitration Provisions in Construction Contracts,"* Law360, January 20, 2012;
- *"Can the Spearin Doctrine Survive in a Design Build World"*, Journal of the American College of Construction Lawyers, Winter 2008 (Co-author)
- *"A Model Litigation Plan for Construction Claims"* Managing Construction Litigation: Leading Lawyers on Organizing Documentation, Developing a Case Strategy, and Overcoming Common Challenges (Aspatore, 2009)

- “*Energy Contracts: Negotiating Strategies for Added Value*,” Energy Law Client Strategies: Leading Lawyers On Litigation, Negotiation And Industry Regulations (Aspatore, 2007)
- “*Electricity Restructuring- A New Ball Game*” (Geothermal Energy Association, 1997)
- “*Revised Construction Industry Rules Adopted by American Arbitration Association*,” July 15, 2015
- “Arbitrators Can Decide Validity of Arbitration Clause in Construction Contract”, December 2, 2011(Co-author)
- “Public Private Partnership Upheld For Construction of Presidio Parkway”, September 2011 (Co-author)
- “Special Advisory: New Mechanics Lien Act in California”, July 31, 2012
- “Court Broadly Defines Subcontractors Who Qualify For Payment Bond Claims”, June 11, 2012.
- “Mechanics Lien Update: Lien Claimants Must Give Owners Notice Of Mechanics Lien,” December 8, 2010 (Co-author)
- “Contractors Can Recover For Public Agency’s Failure To Disclose Material Information,” August 31, 2010 (Co-author)
- “Breach of Contract May Lead To False Claims Liability On Public Works Contracts,” July 14, 2010 (Co-author)
- “Modified Total Cost Method Of Proving Damages: Approved For California Public Works,” April 28, 2010 (Co-author)
- “Trust But E-Verify: A Cheat Sheet For Mandatory Employment Eligibility Verification By Federal Construction Contractors,” January 5, 2010 (Co-author)
- “New Legislation On Wrap-Up Insurance And Indemnity Clauses,” December 28, 2009 (Co-author)
- “General Contractors’ Liability To Subcontractors Employees On Public Infrastructure Projects,” October 28, 2009
- “Public-Private Partnerships: P3s and Competitive Bidding Laws (Part III)”, March 23, 2009
- “Public-Private Partnerships: Potential Conflicts With Prevailing Wage Laws (Part II)”, March 10, 1009
- “Public-Private Partnerships: A Growing Trend (Part I)”, February 26, 2009
- “New California Law Prohibits Retention on CalTrans Transportation Projects”, January 23, 2009
- “Dispositive Motions in Commercial Arbitration,” American Arbitration Association, June 10, 2015
- “Game Changing Cases in Arbitration Law: Impact on Construction Arbitration,” American Arbitration Association, March 2015
- “Recent Developments in Arbitration Law and Impact on Commercial Cases”, American Arbitration Association, February 2014
- “Recent Developments In Arbitration Law And Impact on Construction”, AGC of California, Legal Advisory Committee Retreat, September 2013
- “Impacts of Senate Bill 474 On Indemnity Agreements”, Aon Risk Services Seminar 2012
- “Impact of Design-Build On The Spearin Doctrine,” CLE International Seminar, March 2010

**Speaking
Engagements**

- “Pitfalls Of Public Works Contracting (And How To Avoid Them),” Heffernan Insurance Seminar, May 2009
- “Public-Private Partnerships: New Authority And New Rules For Construction And Infrastructure Projects” Heffernan Insurance Seminar, April 2009
- “Construction Claims”, CLE International Seminar, January 2009
- “Public-Private Partnerships: The New Wave in Infrastructure Construction,” Construction Superconference, December 2008
- “Defective Specifications: Can The Spearin Doctrine Survive In A Design-Build World”, CLE International Public Works Seminar, February 2008
- “Mechanics Liens, Stop Notices and Construction Bonds: Special Remedies in California”, Associated Builders & Contractors Seminar, November 2007
- “Construction Claims in Public Works Disputes”, CLE International Seminar, August 2007
- “Presenting and Defending Construction Claims in California”, Lorman Education Services, October 2004
- “Turnkey Contracts vs. The Implied Warranty of Specification Suitability: Allocation Of Risks For Defective Specifications”, Center for International Legal Studies Seminar, February 2002

**Published
Appellate
Decisions
Citizenship**

Morris v. Horton, 27 Cal. Rptr. 2d 585 (1994); *Owens Corning Fiberglas Corp. v. Center Wholesale, Inc.*, 788 F.2d, 541 (1986); *In Re Center Wholesale*, 759 F. 2d 140 (1985); *Nickinello v. Robertson*, 23 B.R. 804 (1982).

United States of America