

# **Edward B. Lozowicki, Esq.**

## **Profession**

Full-time Arbitrator and Mediator with specialties in construction, energy, real estate, and commercial contract disputes.

## **Work History**

\*Partner, Sheppard Mullin Richter & Hampton LLP, 2005-2012 & Of Counsel, 2013-2016 \* Partner, Coudert Brothers LLP, 1995-2005 \* Partner, Pettit & Martin LLP, 1978-95 \* Senior Counsel, Owens-Corning Fiberglas Corporation, 1971-78.

## **Legal Experience**

**LITIGATION AND ARBITRATION:** While in private law practice represented business clients in litigation and arbitration of diverse cases including construction, energy, commercial, real estate, and employment disputes. Tried numerous cases for over 40 years before federal and state courts, juries, arbitration tribunals, and administrative agencies

**CONSTRUCTION:** Tried many private and public works cases involving delay, disruption, acceleration, extra work, differing site conditions, construction defects, default termination, equitable adjustments, mechanics lien and bond claims, bid protests, "Spearin Doctrine" claims, prevailing wage and False Claims Act allegations, and so forth. Represented international companies in contract negotiations or litigation of "mega-projects" such as the Trans-Alaska Pipeline, the Haj Pilgrimage Terminal in Saudi Arabia, the CEM Zinc Mining Facility in California, and Santa Clara Hall of Justice. Represented clients in international arbitration of claims on infrastructure projects under ICC, ICSID and CIETAC rules. Represented clients in negotiation and drafting of cost-plus, design-build, EPC (domestic and international), GMAX, turnkey, public-private partnerships (P3), and other forms of contracts. Advised clients on regulatory issues such as OSHA citations, Davis-Bacon compliance, and environmental regulations. Experience includes infrastructure, industrial, commercial and residential projects.

**ENERGY & UTILITIES:** Represented clients in negotiation and litigation of power purchase agreements, wheeling and fuel purchase contracts and interconnection agreements and issues such as contract termination, plant de-rating, price escalation, "claw back" provisions, output ("take or pay") clauses, business fraud and unfair competition law. Relevant projects included fossil, nuclear, geothermal, solar, wind, biomass, cogeneration, LNG, CNG and hydroelectric plants. Represented clients in gas and electric rate-making proceedings, and rule-making cases before Public Utilities Commission involving purchase terms and conditions and project development milestones. Advised clients on transmission rules of the Independent System Operator

(ISO), tariff rules for interconnection to the grid, and permit requirements.

REAL ESTATE: Represented companies in the litigation of real estate disputes involving real estate purchase and sale contracts, leases, and lease-option agreements. Issues included breach of contract, termination, specific performance, enforcement of right of first refusal, failure of option conditions, and defense of mechanics lien and stop notice claims. Negotiated and drafted purchase and sale agreements, leases, letters of intent and other documents.

COMMERCIAL: Represented computer, aerospace and technology businesses in litigation of vendor-purchaser agreements, marketing and licensing agreements. Issues included injunctions, enforcement of UCC security interests, breach of joint venture agreements, breach of warranty, theft of trade secrets, trademark infringement, business fraud and interference with economic advantage. Negotiated and drafted secured transactions, joint venture agreements, purchase order agreements, and others.

### **Alternative Dispute Resolution Experience**

- \* American Arbitration Association: Large Complex Case, Construction, Real Estate, Energy and Commercial panels
- \* Financial Industry Regulatory Authority (FINRA), Public Arbitrator Panel
- \* International Institute for Conflict Prevention and Resolution (CPR), General Commercial Panel
- \* California Office of Administrative Hearings, Panel for Public Works Disputes.

Served as Panel Chair, panel member or sole arbitrator in numerous construction, energy, real estate and commercial cases through hearing and award. Acted as counsel or mediator in the same areas. Representative cases include: \* *Cogeneration Plant*, Chair of panel in dispute over tax and contract issues between the Seller and Purchaser \* *Biomass Power Plant*, Panel Chair in dispute regarding performance guaranty and rescission \* *Energy Marketing Contract*, Panel Chair on dispute over termination of power supply contract between Energy Service Provider (ESP) and customer \* *Light Rail Subway*, Panel member in dispute over claims and counterclaims involving tunnel boring machines (TBM) \* *Gas Fired Merchant Plant*, Panel member in dispute over termination and damages between EPC contractor and subcontractor \* *Shopping Mall*, Panel member in dispute between owner/builder and contractor regarding claims for delay and acceleration \* *Juvenile Detention Center*, Sole arbitrator in dispute over claims and damages for change orders, delay \* *Geothermal Power Project*, Sole arbitrator in contract dispute between owner and developer of geothermal wells \* *County Medical Center*, Sole arbitrator in dispute over claims for lost profits between parties to a Teaming Agreement \* *Industrial Lease*, Sole arbitrator in disputes between seller and buyer regarding exercise of option to purchase real estate and related damages \* *Big Box Superstore*, Sole arbitrator in dispute between general contractor and subcontractor regarding termination and construction defects \* *Real Estate*

*Development Contract*, Sole arbitrator in dispute over development losses between joint venture partners \* *Luxury Residence*, Sole arbitrator in dispute between owner, general contractor and subcontractors regarding claims and cross-claims for construction defects \* *Shopping Center*, Sole arbitrator in dispute over change in conditions between contractors.

### **Alternative Dispute Resolution Training**

\* AAA Construction Conference, 2018 \* ABA 10th Annual Arbitration Training Institute, 2017 (Faculty) \* AAA Construction Conference: Navigating the Unique Aspects of Construction Arbitration, 2017 \* AAA International Arbitration Summit, 2016 \* AAA Consolidation and Joinder In Construction Arbitration: Ignorance Is Not Bliss, 2016 \* AAA Clarity in Award Writing, 2016 \* AAA/ICDR Mediation.org Panel Conference, 2016 \* AAA Arbitrator Use & Misuse of Experts, 2015 \* AAA Crossing the Line: New Developments in the Law of Arbitral Jurisdiction, 2015 \* AAA Roundtable - Arbitration Panels, 2015 \* Speaker, AAA Dispositive Motions in Arbitration, 2015 \* AAA Developments in Arbitration Law: Testing the Boundaries of Court Intervention 2015 \* AAA Sanctions in Arbitration: Everything You Might Not Know that You Should Know 2015 \* AAA Pro Se Parties in Arbitration 2015 \* Faculty, AAA Game-Changing Arbitration Cases: Impacts On Construction Arbitration 2015 \* AAA Construction Conference – Keeping Arbitration Lean, 2015 \* AAA Damages for Neutrals 2014 \* AAA e-Discovery 2.0, 2014 \* AAA Guided Choice: Innovations in Mediation to Get Better Settlements at Less Cost 2014 \* AAA "Exceeded Powers": Recent Trends in Challenging Arbitrator Authority, 2014 \* AAA Managing the Costs of Exchanging ESI, 2013 \* AAA Essential Mediation Skills for the New Mediator, 2013 \* AAA What's a Respondent Like You Doing in a Place Like This? \* Confronting Arbitrability and Jurisdiction Issues in Arbitration, 2013 \* AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012 \* AAA Maximizing Efficiency & Economy in Arbitration: Challenges at the Preliminary Hearing, 2012 \* AAA/AGC, Maximizing Mediation: How to Use Mediation Effectively to Resolve Disputes and Obtain Good Results, 2012 \* AAA Best Practices in Franchise Arbitration, 2011 \* AAA Dealing With Delay Tactics in Arbitration, 2009 \* AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics, 2007 \* AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards , 2006 \* AAA Construction Arbitrator II Training: Advanced Case Management Issues, 2002 \* AAA Construction Industry Arbitrator Training, 1997 \* Faculty, AAA Basic Arbitrator Training, 1990 \* Various other ADR training, 1981-89.

### **Professional Licenses**

\* Admitted to the Bar: California, 1970 \* U.S. District Court, Northern, Central, Southern and Eastern Districts of California, 1974 \* U.S. Court of Appeals, Ninth Circuit, 1984 \* All state courts in California.

## **Professional Associations**

\* Co-Chair, Arbitration Committee, ABA Dispute Resolution Section \* ABA Construction Industry Forum \* Fellow, Construction Lawyers Society of America \* California Dispute Resolution Council \* Board of Visitors, School of Law, Santa Clara University \* Past Chair, Legal Advisory Committee, AGC of California

## **Awards and Honors**

\* Rated AV-Preeminent, Martindale Hubbell, 2016- current \* Adjunct Professor of Alternative Dispute Resolution Law, School of Law, Santa Clara University, 2013-16 \* Distinguished Service in Pursuit of Justice Award, St. Thomas More Society 2014 \* Recommended Lawyer for Construction Law, PLC Which Lawyer, 2010-2012 \* Who's Who Legal: California, 2010.

## **Education**

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

## **Publications and Speaking Engagements**

### **BOOKS**

\* *Binding Arbitration of Contract Disputes in California*, American Arbitration Association, 1988. \* *"Contracts, Claims, and Dispute Resolution,"* Construction Accounting Deskbook, CCH, 2005; \* *Presenting and Defending Construction Claims in California*, Lorman, 2004 \* *Design-Build/Turnkey Construction in California*, Lorman 2002; \* *Mechanics Liens, Construction Bonds and Stop Notices*, Sheppard Mullin, 2012; \* *"Energy Contracts: Negotiating Strategies for Added Value,"* Energy Law Client Strategies: Leading Lawyers on Litigation, Negotiation and Industry Regulations, Aspatore, 2007;

### **ARTICLES**

\* *"Second Circuit Reaffirms Manifest Disregard As Ground for Vacature,"* New York Dispute Resolution Lawyer, 2017 \* *"American Arbitration Association Revises Construction Arbitration Rules,* ABA Litigation Section, Alternative Dispute Resolution Newsletter, 2016; \* *"Parsing Arbitration Provisions in Construction Contracts,"* Law 360, 2012; \* *"Special Advisory: New Mechanics Lien Act in California,"* Sheppard Mullin, 2012; \* *"A Model Litigation Plan for Construction Claims,"* Managing Construction Litigation, Aspatore 2009; \* *"Public Private Partnerships,"* 3-article series, Sheppard Mullin 2009; \* Co-Author, *"Can the Spearin Doctrine Survive in a Design Build World,"* Journal of the American College of Construction Lawyers, Winter 2008. \* *"Electricity Restructuring - A New Ball Game,"* Geothermal Energy Association, 1997; \* Published many articles and Blog posts which can be reviewed at: [www.LoZowickiADR.com](http://www.LoZowickiADR.com)

## SPEAKING ENGAGEMENTS:

\* *Does the Arbitrator Have Jurisdiction and Who Decides*, ABA Dispute Resolution Section Spring Conference, 2018 \* *Award and Post Award Issues*, ABA Arbitration Institute (Faculty), 2017 \* *Tricky Business: Avoiding Pitfalls in Drafting Awards*", ABA Dispute Resolution Section Spring Conference, 2017 \* *Dispositive Motions in Arbitration*, ABA Dispute Resolution Section Spring Conference, 2016 \* *Game-Changing Cases in Arbitration: Impact on Construction Claims*, AAA Webinar, 2015 \* *Dispositive Motions in Commercial Arbitration*, AAA, 2015 \* *Recent Developments in Arbitration law and Impact on Commercial Cases*, AAA, 2014 \* *"Recent Developments in Arbitration Law and Impact on Construction"*, AGC of California 2013.

\* *Prevailing Wage and Misclassification Disputes*, Sheppard Mullin, 2013. \* *"Impacts of Senate Bill 474 on Indemnity Agreements"*, Aon Risk Services 2012; \* *"Pitfalls of Public Works Contracting"*, Sheppard Mullin 2010 \* *"Public Private Partnerships: The New Wave in Infrastructure Construction"*, Construction Superconference 2008; \* *"Mechanics Liens, Stop Notices and Construction Bonds: Special Remedies in California,"* Associated Builders & Contractors Seminar, 2007; \* *"Defective Specifications: Can the Spearin Doctrine Survive In A Design-Build World,"* CLE International Public Works Seminar, 2007; \* *"Presenting and Defending Construction Claims in California,"* Lorman Education Services, 2004; \* *"Turnkey Contracts Vs. The Implied Warranty of Specification Suitability: Allocation of Risks for Defective Specifications,"* Center for International Legal Studies, 2004. Over course of career spoke at many other seminars and conferences on arbitration, ADR and construction law topics.

PUBLISHED APPELLATE DECISIONS: \* *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. Roberson*, 23 B.R. 804 (1982).