



Construction Lawyers Can Be Part of the Solution



Much discussion has hit the web recently regarding the role that [construction lawyers](#) have had relating to the construction industry. Unfortunately, most of this discussion has focused on the negative aspects of lawyer involvement in construction contracting.

A recent [Viewpoint article in ENR magazine](#) opines that much of the delay, expense and other issues plaguing complex construction projects are

attorney related, if not caused.

That article concludes with the following:

As if there weren't sufficient risks already inherent in the business of bending nature to our will, we have added a new, highly potent risk: The risk that the other party to our contract has better lawyers than we do. Is the American construction industry better off for that? I think not.

In doing so, the author, a PE, throws us attorneys under the bus for creating a toxic environment in which attorneys (not those on the ground managing the projects, contracts and payment streams) cause the delays, [undocumented changes](#), economic issues with subcontractors, and the other myriad issues that at times plague the [Murphy's Law](#) ruled world of the large commercial construction project.

My friend, fellow construction lawyer, and [co-presenter at the first Green Matters conference](#), voices another negative, though slightly more measured, discussion of an attorney's role in a construction project. In his post at the Lien Blog entitled [Are There Too Many Lawyers in Construction?](#), Scott (@scottwolfejr) takes a different angle. He discusses the fact that construction law has been around for a long, long time and that it has become more and more complex. This complexity leads to more attorney involvement, and likely more complexity. His opinion on this point is summed up as follows:

Modern construction law will not sentence contractors to death. However. . . it may metaphorically kill the contractor or the contractor's business with the weight of its complexity and fairness.

Scott then goes on to state some ways by which the little guy can level the playing field against the larger and better funded (read lawyered up) companies.

I recommend both of these pieces for your reading.

As someone that represents numerous smaller construction companies here in Virginia, I feel the pain of those on the ground and those with payment issues when they are faced with the daunting task of collecting money to which they are rightly due. However, I believe that the early involvement of [good construction counsel](#) can stave off many of the issues that arise simply through the better drafting of contracts and proper conduct of business. In many instances, the *failure* to consult a construction lawyer (as opposed to the involvement of one) causes more issues than involvement of a lawyer would have. Furthermore, attorneys can [assist in the early resolution of construction related disputes](#) without the need for trial.

While there may or may not be too many attorneys entering the practice of law on a yearly basis to sustain the legal profession properly, this general topic is one for other blogs and outside the scope of this construction law blog. That said, most of the construction attorneys that I know truly seek to assist their clients to make money and run profitable enterprises. In short, and despite the all too common view of the non-lawyers in the industry, consulting with an experienced construction attorney *before a problem occurs* is a great way to avoid all of the problems that the above referenced opinion pieces discuss.

What do you think? Please let me know by comment.

Image via [Wikipedia](#).

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.