

# Surety

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## RELATED SERVICES

- Construction
- Insurance

## CONTACTS

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Partner

## OVERVIEW

GRSM attorneys represent clients in all aspects of suretyship: from when an account first goes into claims through the stages of addressing performance and payment bond claims. We pursue affirmative claims both upstream and downstream, and we lead the enforcement of indemnity obligations. Our representation of sureties covers payment and performance bond claims, contractor defaults, takeover and completion agreements, and the defense of bad faith claims.

Our attorneys have successfully handled numerous complex and contentious disputes, including in alternative dispute resolution forums, state and federal court, arbitration and appeals. The matters we have advocated for on behalf of clients are wide ranging and include:

- Unpaid change orders and owner-caused delays
- Wrongful terminations
- Recovery of home office overhead costs
- Prosecution of productivity/ inefficiency claims
- Defective work
- Total cost claims

We regularly defend false claims assertions by owners, bad faith claims, and prompt payment act penalties, among other construction-related claims, and subdivision bond claims. Our experience covers public works, residential, commercial and federal projects.

## REGULATORY COMPLIANCE & BEST PRACTICES COUNSEL

Clients gain tremendous value in our best practices counsel. We draft and negotiate agreements related to performance bond claims, including termination agreements. We give guidance before a dispute reaches the lawsuit stage and offer practical insights on:

- Surety financing
- Setting reserves
- Claim preservation and contract compliance on live construction projects
- Regulatory compliance
- Indemnity and other surety-related issues

GRSM keeps clients ahead of important developments through our involvement in key industry groups and publications, which include the American Bar Association's Tort Trial & Insurance Section and Construction Industry Section and The Surety Claims Institute.

## REPRESENTATIVE EXPERIENCE

### Bond Claims

- Represented numerous sureties in multi-project defaults and defense and completion efforts on accounts with more than \$200 million in payment and performance bond claim exposure.
- Assisted the surety in completing projects and paying hundreds of material suppliers and subcontractors in the default of the largest commercial contractor in Indiana on more than a dozen bonded projects. We litigated claims against a bankruptcy trustee concerning payments made by the debtor prior to bankruptcy and concerning the surety's right to receive contract funds held by project owners.
- Defended against numerous payment bond claims made by subcontractors on construction projects.
- Obtained judgments, discharges and favorable settlements for numerous performance bond sureties based upon lack of proper notice.
- Represented the payment and performance bond surety through the collapse of a regional commercial contractor, including settling over one hundred claims, taking over and financing the operations of the contractor in ongoing projects, and securing assets from the indemnitors in order to achieve a zero-loss outcome for the surety.
- Defeated a performance bond claim at the pleading stage based upon proper notice and opportunity to cure.

- Represented the performance bond surety for a design-build project that suffered a catastrophic mid-construction collapse, resulting in multiple fatalities and worked with the other project participants to resolve resultant claims in a way that resulted in no payments by, or losses to, the surety.
- Represented surety in state supreme court case involving “pay if paid” and “pay when paid” clauses.
- Represented surety in dozens of cases involving tax-deferred investments in windmill farms, greenhouses and other investment vehicles.
- Defeated motions for judgment against appellate bond surety.
- Defended warranty claims under a subcontract performance bond in connection with claims by the owner of a professional baseball stadium.

#### **Subdivision Bonds**

- Obtained finding after argument in state supreme court that resulted in no liability on subdivision bond.
- Obtained decision in state supreme court on behalf of a surety limiting scope of coverage of a subdivision development surety bond in a case of first impression.
- Represented surety in published opinion wherein court found that subdivision bond surety had no liability to foreclosing lender.

#### **Affirmative Claims**

- Obtained eight-figure settlement of extensive and complex affirmative claims against public works owner, including recovering claims based upon delay, productivity and differing site conditions and defeating owner’s False Claims Act, delay and other counterclaims.
- Obtained arbitration award against public works owner for delays, change orders and home office overhead and defeating the owner’s counterclaims.
- Obtained eight-figure settlement for surety client in complex, multi-party dispute on a public project involving extensive damages and defects, breach of contract claims and tort-based claims against contractors and design professionals.
- Resolved numerous pass-through claims by subcontractors.
- Active involvement in development and prosecution of all types of construction-related claims on public, federal and private projects.

#### **Counseling, Drafting and Negotiating**

- Drafted and negotiated numerous takeover, tender and ratification agreements in connection with

performance bond claims.

- Drafted and negotiated numerous pass-through agreements.
- Negotiated to obtain a termination for convenience on a troubled public works project, saving the client millions of dollars.
- Assisted with setting services for surety clients.
- Provided legal counsel to address contract compliance and claim preservation on numerous live construction projects.
- Counseled client on surety indemnity for international surety market.

### **Indemnity**

- Defended a bad faith claim arising from a surety's handling of a payment bond claim, creating new law regarding interpretation of Little Miller Act requirements.
- Defended against bad faith claims by indemnitors seeking to extinguish \$100 million indemnity obligations.
- Represented surety in appeal involving right to attach indemnitors' assets.
- Represented surety trade association in connection with statutes of limitations to surety's claims under general indemnity agreements.
- Obtained summary judgment against bond principal and indemnitors under general indemnity agreement, including defeating claims of bad faith.