



# D. Gary Christensen

Partner

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**“I listen to a client’s needs and desired outcomes, then exercising good judgment based on experience, work to help resolve disputes, and to see projects succeed. I believe that working as a team with a client is the best way to achieve success as efficiently as possible.”**

Gary Christensen chairs the firm’s construction industry team and has more than 30 years of experience representing all segments of the design and construction industry in the Northwest. Since joining the firm in 1988, Gary has focused his practice on commercial construction litigation, negotiation of design and construction contracts, insurance recovery, public contracting, and strategic options for construction projects. He helps clients build schools, medical facilities, affordable housing, distribution centers, resorts, and other large commercial and public projects, from planning, structuring, and negotiating contracting relationships to litigation of claims both during and after construction. Gary regularly negotiates design, construction, design-build, construction management, and related contracts and subcontracts. He also arbitrates and litigates delay, lien, payment, priority, and defect claims during and after construction.

Gary has been selected for inclusion as an Oregon Super Lawyer every year since 2006 and has been included on the Top 50 attorneys in Oregon list since 2019. Additionally, he is listed in Best Lawyers in America® for Construction Litigation and rated AV® Preeminent™ by Martindale-Hubbell®.

## Professional Activities

- Oregon State Bar
  - Construction Law Section
    - past chair, 2010
    - Executive Committee, member, 2003-2011
    - advisory member, 2013-present
  - Business Litigation Section, member
  - Litigation Section, member
  - Debtor-Creditor Section, member

## Education

J.D., J. Reuben Clark Law School (BYU), *magna cum laude*, 1988

- Order of the Coif
- Phi Kappa Phi
- Order of Barristers

B.A., Brigham Young University, *cum laude* with university honors, international relations, 1985

## Bar Admissions

Oregon, 1988

## Court Admissions

U.S. Supreme Court, 2019

U.S. District Court, District of Oregon, 1988

- Associated General Contractors, Oregon-Columbia Chapter
  - Professional and Industry Associates Council, chair and co-chair, 2016-2018
  - Counsel to Board of Directors, 2003-2004
- American Bar Association
  - Forum on the Construction Industry
  - Construction Litigation Section
  - Litigation Section
- Owen M. Panner American Inns of Court, alumnus
- J. Reuben Clark Law Society, Portland Chapter, board member
- Board of Directors, chair, 2020-2022; past chair
- BYU Law School Alumni Association, board member and class representative

### Civic Activities

- Boy Scouts of America, adult leader, 1989-2019
- Served as lay minister in his church congregation
- Served on school board budget and scholarship committees and local neighborhood improvement associations

### Representative Experience

#### Construction Disputes

- Successful resolution of multimillion-dollar claims and numerous opposing and pass-through claims for CM/GC in a complex, multiparty litigation arising from the reconstruction of the Sellwood Bridge in Portland. Case settled through a complex mediation proceeding, with full case presentation, following significant discovery of electronically stored information.
- Arbitrated and mediated resolution of defective roof structure on new education facility, recovering almost 90 percent of district's damages, costs, and attorney fees in a challenging political environment. Collection and analysis of significant physical evidence, electronically stored information, expert investigations, and reports.
- Client, an independent purchaser of custom products used on public projects, avoided liability when it discovered that the product had not been manufactured as advertised and specified. Client successfully avoided liability using safe harbor provisions of the state's False Claims Act in a delicate strategy involving the state and several other interested parties.
- Successfully extracted supplier of large hydroelectric turbines from complex federal delay and defect litigation arising from the retrofitting of an existing dam for electrical generation. Guided strategic motion practice and judicial settlement conference to release supplier from virtually all claims, including obtaining payment of supplier's outstanding invoices.
- Established strategy and agreements to remove and replace general contractor during a significant casino expansion project, including claims management, assignment of subcontract rights, and resolution of delay and payment claims, all without formal dispute resolution proceedings.
- *Wyndham Resort Development Corporation et al v. Swinerton Builders Northwest, Inc., et al.* Multimillion-dollar recovery in the largest private sector construction-defect case in the history of the state at that time. Case involved claims of negligence, breach of contract, and breach of warranty for multiple types of defects. Representation of The Resort at Seaside against a general contractor and some 28 additional subcontractors, architects, designers, vendors, and material suppliers. Case complexities included dealing with condominium association rights and complex insurance coverage issues.
- Full recovery of all damages and almost all costs and attorney fees from shopping mall landlord for project between its tenant and client contractor, involving multiple potential defenses, construction liens, and significant claim amounts.

- Resolved without litigation public owner's claims against contractor for construction of an addition to a public building that left obvious aesthetic damage. Focused expert evaluations of exterior envelope of building and challenging valuation issues.
- Negotiated walk-away agreement among MEP subcontractor, general contractor, and owner of hospital after subcontractor on expansion project improperly used equipment, sending construction debris into operating hospital. Avoided litigation and project delay by finding and negotiating options to full termination of contractor or subcontractor.
- *MultiCare Health System v. Skanska USA Building Inc. et al.* Successful recovery of \$3 million water damage and delay claims arising during construction of new wing of hospital. Claims resolved under property and liability policies and with both subcontractors and insurers directly, following complex mediations.
- *Portland School District v. Great American Insurance Company.* Complete recovery of more than \$2 million building damage claim caused by roofing fire at middle school, plus fees. Trial and appellate claims against roofing contractor's excess insurance carrier, including successful assignment of the contractor's claims against its excess liability insurer.
- *Portland Art Museum v. Ann Beha Architects, Inc.* Obtained multimillion-dollar recovery during the course of litigation and mediation that involved claims for breach of contract, negligence, and breach of warranty against a Boston architectural firm arising from incomplete and uncoordinated drawings in connection with the renovation of the Masonic Temple and construction of the Mark Building, the new home of the Portland Art Museum. Representation of the museum additionally included resolution of multimillion-dollar contractor and subcontractor claims (which were resolved for less than 30 percent of the principal amount of the claims) and avoidance of payment of any costs or attorney fees.
- *Walsh Construction Co. v. Mutual of Enumclaw Insurance Co.* Filed successful amicus curiae briefs for Associated General Contractors and others before Oregon Supreme Court to clarify important ruling on Oregon's anti-indemnification statute governing construction contracts. (2005)
- Litigation of major construction-defect claim against design/builder of large Oregon grocery distribution center when concrete floors lacked flatness and levelness needed to operate facility efficiently. Assisted a multinational engineering firm in resolving claims asserted by a municipal wastewater commission related to the design and construction of a biosolids irrigation facility.
- Assisted owner with project contract closeout, payment disputes, and defective-work claims with respect to multimillion-dollar theater project.
- *Trendwest Resorts, Inc., et al v. Ramsay-Gerding Construction Company et al.* Obtained multimillion-dollar recovery in mediation of negligence and breach-of-contract claims against architects, an owner's representative, a general contractor, and subcontractors arising from the defective design and construction of the WorldMark at Gleneden Beach Resort.
- *Sherwood School District v. OC America Construction.* Successful recovery for school district on extensive scheduling delay, cost, and defect claims against general contractor during and after construction of new elementary school. Obtained arbitration award of more than \$1 million and successfully defended court challenge to award.

### Construction Contracting

- Successfully negotiated and assisted owner's legal team with development of complicated CM/GC contract for construction of a large new fabrication facility for a major technology company. Contract required significant, detailed specifications and terms that were heavily negotiated to the owner's overall benefit.

- Successfully negotiated construction easement and construction contract among multiple public and private parties for reconstruction of neighbor's adjoining wall to permit construction of new affordable housing project. Intricate negotiation of multiple intersecting interests in properties and new wall, including care for displaced tenants and a two-phase construction process to maintain operations of neighboring property and critical path of affordable housing construction.
- A number of contractors, healthcare systems, education districts, and other clients have us update and revise their respective master and template design and construction contracts on a regular basis. Our experience litigating construction disputes significantly assists in honing and modernizing master and template contracts.
- Negotiated and prepared complex design-build contracts for major new casino complex, involving reconstruction of freeway interchange; construction on tribal, private, and public land; multiple public, ownership, and financing interests; and challenging timeline.
- Represent national/international internet service provider to prepare and negotiate design/build and conventional construction contracts for data farms and related facilities nationwide.
- Successfully closed \$215 million syndicated credit facility for tribe and tribal enterprise to expand tribal casino and build hotel and resort (Northern Quest Resort & Hotel) and handled ongoing issues among bank, tribe, and contractor during project. Handled contracts with architects, contractors, and other construction-related vendors, addressed exceptional bonding and security issues related to tribe's unique sovereign status, and negotiated ongoing construction-related relationships through fast-track construction from design to occupancy.
- Negotiation of design/build contracts for new grocery distribution centers in California and Idaho and expansion projects of other centers.
- Successfully negotiated design and construction contracts among general contractor and multiple owners of single structure broken into three or more commercial condominiums, including affordable housing, church, and commercial owners, on several different matters. Design and construction counsel for Northwest facilities for the leading developer of computer processors and related technology. Assist with preparation of contracts for construction and expansion of large fabrication facilities under extreme design and construction conditions.
- Represent leading national architecture firms in contract negotiations for major construction projects and claim disputes.
- Counsel for design and construction of Providence Health & Service's capital construction projects for more than 25 years. Preparation and negotiation of master and individual contracts and resolution of claims from projects.
- Negotiation of design, construction management, and construction contracts for Salem Hospital's major capital expansion projects and multiple healthcare structures.
- Negotiation of design and construction contracts for affordable housing projects over many years, resulting in dozens of successful housing construction projects and renovations across Oregon.
- Involved negotiation and modification of complex construction contract for owner of large new hospital and related facilities and policyholder insurance claims following completion.
- Negotiation of several specific design and construction contracts and change orders for The Captain Michael King Smith Educational Institute, Evergreen Aviation & Space Museums, large-format theater, and related facilities. Successful litigation and settlement of construction claims and audits relating to certain of the projects..

## Publications

- "Oregon's Construction Industry Weathering Coronavirus so Far, but Dreading Possible Shutdown," *OregonLive*, quoted (Mar. 2020)

- “COVID-19: Delays and Force Majeure in Construction Contracts,” Miller Nash Graham & Dunn, *From The Ground Up* (Mar. 2020)
- “New Oregon “Stay in Place” Order Permits Construction Industry Work Under Distancing Policies,” Miller Nash Graham & Dunn, *From The Ground Up* (Mar. 2020)
- “Alternative Dispute Resolution of Construction Disputes,” Oregon State Bar, *Construction Law Deskbook* (2019)
- “Construction Disputes,” Oregon State Bar, *Alternative Dispute Resolution in Oregon Deskbook* (2019)
- “Design and Construction Law,” Oregon State Bar, *2019 Legislation Highlights* (2019)
- “Cases of Interest,” Oregon State Bar, *OSB Construction Law Section Newsletter* (2004 to present)
- “Pleading Damages,” Oregon State Bar, *OSB Civil Pleading & Practice Deskbook* (1998, 2001, 2006, 2012)
- “Alternative Dispute Resolution,” Oregon State Bar, *OSB Construction Law Deskbook* (1993, 1997, 2004, 2011)
- “Three New Oregon Laws May Help You to Get Paid,” Associated General Contractors, *AGC Construction News Update* (Fall 2011)
- “Mental Distress Damages,” Oregon State Bar, *OSB Damages Deskbook* (1991, 1995, 1998, 2001, 2007)
- “Additional-Insured Construction Insurance Restored to Balance in Oregon,” Miller Nash, *GroundBreaking News* (Jan. 2005)
- “New Rules Will Now Govern All Public Contracting,” Miller Nash, *News You Can Use* (June 1999)
- “Managing Environmental Risks: New Approaches Between Contractor and Owner,” *Construction & Environmental Law* (1994)
- “Allocation of Risks of Hazardous Material Costs Between Owner and Contractor in the Construction Contract,” Oregon State Bar, *OSB CLE* (1991)

## Presentations

Gary is a frequent speaker on various topics. Following is a listing of presentations since 2015. A complete list is available upon request.

- “What’s Ahead? Key Legislative and Employment Updates,” Miller Nash Graham & Dunn, webinar, co-presenter (Mar. 2021)
- “Legislative and Case Law Update,” Oregon State Bar, Construction Law Section Annual CLE, co-presenter (Oct. 2020)
- “We Never Stop Learning – Case Law and Statutory Update,” The Seminar Group, 25th Annual Construction Law seminar, co-presenter (Sept. 2020)
- “Navigating COVID-19 Part 1: Contracting in the Time of COVID-19,” Associated General Contractors, Professional and Industry Associates Council and Legal Operating Committee, webinar, co-presenter (Apr. 2020)
- “Corona, Corona, I Didn’t Wanna Know Ya! How to Address the Impacts of COVID-19 and Get Paid for Them!” Associated General Contractors, Specialty Contractors Council, webinar, co-presenter (Apr. 2020)
- “Coronavirus in Construction Webinar: Key Issues and Best Practices for Projects and Personnel,” Miller Nash Graham & Dunn, webinar, co-presenter (Mar. 2020)
- “Now What? New Oregon Construction Cases and Legislation,” Oregon State Bar, What You Should Know: Oregon Construction Law 2019 CLE (Oct. 2019)
- “General vs. Sub: Counterpoints & Perspectives,” Associated General Contractors, Specialty Subcontractors Council (Sept. 2019)
- “Now What?” The Seminar Group, 24th Annual Construction Law seminar (Sept. 2019)
- “Case Law Update,” Oregon State Bar, Construction Law Section CLE (Oct. 2018)
- “Case Law and Statutory Update,” The Seminar Group, 23rd Annual Construction Law seminar (Sept. 2018)
- “Top 10 Changes to AIA Documents,” The Seminar Group, Hot Topics in Real Estate Development (May 2018)

- “New Oregon Case Decisions & Legislation in 2016 and 2017,” The Seminar Group, 22nd Annual Oregon Construction Law Conference (Sept. 2017)
- “Design-Build & The Attorney’s Point of View,” Design-Build Institute of America (Apr. 2017)
- “2016 Construction Case Law Developments,” Oregon State Bar and Washington State Bar, Two States of Construction Law: Working in Both Washington and Oregon CLE (Nov. 2016)
- “Insurance Coverage—Strategies to Protect Your Business,” Miller Nash Graham & Dunn, February Breakfast Roundtable (Feb. 2016)
- “Construction Insurance,” Oregon State Bar, Construction Law CLE (Oct. 2015)
- “Construction Default Rights & Remedies,” The Seminar Group, Default Rights & Remedies Under Construction & Design Contracts (June 2015)

### Recognition & Honors

- Business Council Chair Award, Associated General Contractors, Oregon-Columbia Chapter, 2018
- Paul Emerick Training Award, Associated General Contractors, Oregon-Columbia Chapter, 2009
- Presidential Award, Associated General Contractors, Oregon-Columbia Chapter, 2004
- Rated A-V® Preeminent™ by Martindale-Hubbell®
- Selected for inclusion as an Oregon Super Lawyer, 2006-present
  - Top 50 Oregon Super Lawyers list, 2019-2020
- Selected for inclusion in *The Best Lawyers in America*® in Construction Law and Litigation-Construction, 2010-present
  - Named “Lawyer of the Year” in Construction Law (Portland), 2014, 2018

### Personal Activities

Gary works hard to keep up with his wife and three active children in hiking and camping, visiting state and national parks, Scouting, and other adventures.