

# LAW OFFICES OF PAUL W. BERNING

## Resume of Paul W. Berning

### Overview of Practice

Paul Berning has practiced construction law for more than 25 years, most of them at large, national law firms. He has represented clients involved in projects of all sizes, from major infrastructure and industrial projects to commercial and residential projects. Clients include regional, national and international businesses and individuals. Mr. Berning is experienced in related practice areas, including energy projects, business litigation, and licensing and regulatory compliance.

**Construction:** Practice centers on contract negotiation, counseling before and during projects aimed at preventing disputes, and resolution of disputes during and after construction. Matters have involved claims for extra work, project delay, disruption of work, lost efficiency; defective workmanship and materials; terminations for default; letters of credit; non-payment; payment remedies, including mechanics liens, stop payment notices, payment bonds, lien priority disputes and Miller Act claims; project financing; labor and material shortages; bid protests; government contracts; allegations of false claims.

Clients include project owners, general contractors, subcontractors, design professionals, design-build and engineer-procure-construct contractors, suppliers, manufacturers.

Projects include Fillmore Center (11-building mixed use re-development project in San Francisco), new Tacoma Narrows Bridge in Washington State, Eurotunnel, airports, apartment buildings, condominiums, transit systems, hospitals, hotels, schools, dams, mines, process plants, pipelines, paper mill, wastewater plant, ports and single-family homes.

**Energy:** Practice involves contract review and drafting; advice on project execution; dispute resolution during and after projects; assistance with regulatory compliance.

Clients include EPC contractors, power producers and developers, renewable energy companies, energy management companies, manufacturers.

Projects include geothermal energy facilities, hydroelectric power system, wind farms, solar power plants, solar energy systems, energy storage systems, smart grid systems, coal- and gas-fired power plants.

**Licensing and Regulatory Compliance:** Practice involves counseling clients on contractor licensing, design professional registration, design-build licensing and related regulatory issues; advising on business structuring, start-up and re-structuring; assisting with ongoing compliance; representing clients in regulatory proceedings.

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Clients include contractors, design professionals and firms, technology companies, equipment manufacturers, energy conservation companies.

**Commercial Litigation:** Practice includes cases involving fraud and unfair business practice claims, creditor's remedies, real estate, insurance coverage, intrusions on computer systems, trade secrets, yacht design, mining claims, enforcing international arbitration awards, surety bonds, false advertising.

Clients include movie theater chain, auto parts dealer, gold mining company, manufacturers.

### Nature of Experience

**Representations:** Trials, arbitrations (both as counsel and arbitrator), appeals, mediations, dispute review board, administrative proceedings, negotiations.

**International Experience:** Projects in or involving participants from the United Kingdom, France, New Zealand, Ecuador, Uruguay, Dubai, Spain, Japan, South Korea.

**Prior Firms:** Partner in the nationally and internationally recognized construction law practice groups at Thelen LLP and Howrey LLP.

### Additional Assignments

Founder, Editor-in-Chief, ConstructionWebLinks.com, Internet portal for the construction, engineering, architecture and infrastructure industries, from inception in 1999 to 2011. Site was owned by Thelen LLP and Howrey LLP.

Manager of Thelen, Marrin, Johnson & Bridge's legal clinic pro bono program, 1988-1991; volunteer lawyer, 1986-1988.

Conceived, developed, managed Thelen, Marrin, Johnson & Bridge's LAMP (Legal Assistance for Military Personnel) program during Gulf War, 1991-1992.

### Admissions

California

U.S. Supreme Court

U.S. Court of Appeals, 9th Circuit

U.S. Court of Appeals, District of Columbia Circuit

U.S. Court of Appeals, 4th Circuit

U.S. District Courts: Northern, Eastern, Central and Southern Districts of California

U.S. Court of Federal Claims

England and Wales (non-practicing)

### **Honors**

Martindale-Hubbell: AV® Preeminent™ 5.0 out of 5

SuperLawyers (multiple years)

Marquis Who's Who in America, Who's Who in the World, Who's Who in American Law (multiple years)

### **Arbitration, Mediation and DRB**

Member, American Arbitration Association's Roster of Neutrals (construction arbitrations)

Member, American Arbitration Association's Panel of Mediators

Member, Dispute Resolution Board Foundation

Pepperdine University, Straus Institute for Dispute Resolution, "Mediating the Litigated Case" (six days), 2009

Mediation Offices of Steven Rosenberg, "Mediation Training" (six days), 2008

### **Professional Affiliations**

Associated General Contractors of America

U.S. Building Green Council

Building Industry Conference Board

Building Code Task Force of the International Council of Shopping Centers (former member)

American Bar Association and its Forum on the Construction Industry

World Affairs Council of San Francisco

Commonwealth Club of California

State Bar of California

Alameda County Bar Association

### **Externships**

California Supreme Court, Justice Otto Kaus, 1985

San Francisco Superior Court, Judge Raymond Williamson, 1986

Consumer Fraud Division, San Francisco District Attorney's Office, 1984

### **Education**

University of San Francisco School of Law (J.D., with honors)

University of Missouri (B.J.)

### **Publications**

#### **For Clients**

Comprehensive, 50-state reports on: contractor licensing, professional licensing for engineers and engineering companies, and design-build licensing requirements; total cost claims; abandonment of contract and recovery in quantum meruit; materials shortages. Oversaw preparation of such reports on: force majeure provisions in construction contracts, particularly regarding labor shortages; measuring and limiting damages; cardinal change; jury verdict method of determining damages.

#### **For Books, Journals, Web**

"Construction," chapter in *Business and Commercial Litigation in Federal Courts*, Thomson West (2d ed.), 2005 and annual supplements.

"United States Construction, Architecture, and Engineering Industry," chapter in *United States Country Handbook*, which is part of *International Contract Manual* (Thomson/Sweet & Maxwell), 2007.

*U.S. Construction, Architecture and Engineering Industry: An Overview for International Investors*, paper presented to the Shanghai Association of International Economic and Technological Cooperation in Shanghai on December 10, 2002, and to the China International Contractors' Association in Beijing on December 12, 2002. Serialized in China's Construction Times newspaper. Reprinted on [www.ConstructionWebLinks.com](http://www.ConstructionWebLinks.com), February 2, 2004.

"Termination Claims from Owner's and Contractor's Perspective," chapter in *Proving and Pricing Construction Claims* (Wiley 1990).

"Complying with Licensing and Registration Laws," chapter in *Construction Checklists*, ABA Forum on the Construction Industry, 2008.

"Disputes Review Boards," paper presented to first World Conference on Construction Risk, Paris, April 28-29, 1994.

"Complying with Licensing and Registration Laws: An Overview, with Case Histories," [www.ConstructionWebLinks.com](http://www.ConstructionWebLinks.com), April 12, 2004.

"Complying with Licensing and Registration Laws: A Compliance Checklist,"  
www.ConstructionWebLinks.com, April 12, 2004.

"Reconstruction of Iraq: Overview of Contracting Process and Resource Guide,"  
www.ConstructionWebLinks.com, April 21, 2003.

"Project Web Sites: How to Evaluate Them and How to Agree on Using Them,"  
www.ConstructionWebLinks.com, May 13, 2002.

"E-Commerce and the Construction Industry: User Viewpoints, New Concerns, Legal Updates  
on Project Web Sites, Online Bidding and Web-Based Purchasing,"  
www.ConstructionWebLinks.com, December 23, 2003.

"E-Commerce and the Construction Industry: The Revolution Is Here,"  
www.ConstructionWebLinks.com, October 2, 2000.

"Software Audits: How Companies Risk Big Penalties for Copying Software,"  
www.ConstructionWebLinks.com, March 22, 2004.

"Timeliness Crucial When e-Bidding for Federal Contracts, Recent Bid Protests Show,"  
www.ConstructionWebLinks.com, October 27, 2003.

"Problems in Enforcing Subcontractor Bids Are Illustrated by Four Recent Cases,"  
www.ConstructionWebLinks.com, February 24, 2003.

### **Speeches**

"How to Win Construction Claims," San Francisco, five 2-day seminars from 2001 to 2003.

"E-Construction Management: Is It Just Glamour and Glitz?" International Bar Association, San  
Francisco, September 16, 2003.

"Project Websites: A Toolbox for Avoiding and Resolving Disputes," Construction  
Superconference, San Francisco, December 13, 2002.

"E-Tools: Time for a Legal Check-Up," American Institute of Chemical Engineers' Annual  
Engineering and Construction Contracting Conference, San Francisco, October 4, 2002.

"Legal Aspects of Web-Based Project Controls and Electronic Documents," Western Council of  
Construction Consumers, Irvine, California, March 2002.

"Project Management Web Sites," Construction Superconference, San Francisco, December  
2000.

"Construction Project Web Sites," California AGC Legal Retreat, September 30, 2000.

"Total Cost Claims by the Contractor: Peril or Panacea," Construction Superconference, New York, April 2, 1992.

"Construction Payment Remedies: Using the Right Tools at the Right Time," Lorman Teleconference Seminar, November 10, 2005; October 6, 2009; and March 19, 2013.

"Design/Build and Construction Management," Lorman Seminars, Oakland, California, July 20, 2005; San Jose, California, October 6, 2005.

"Top 5 Topics in California Construction Law," Lorman Seminars, San Francisco, January 2005.

"Construction Payment Remedies," Lorman Seminars, San Francisco, October 14, 2005.

"Construction Claims," Lorman Seminars, San Francisco, December 6, 2005.