

## ***Design Professional Representation***

We have has extensive experience defending professional liability claims and risk avoidance for design professionals through contract re-drafting:

### ***FOCUS: Use novel and early resolution strategies***

*We analyze our cases both early in the process, and throughout litigation to identify issues that could lend to an early or novel resolution strategy.*

<b><i>Construction Defect</i></b>	Successfully defended a general contractor for alleged design and construction defects involving <b><i>design-build metal stud framing system</i></b> for the City of Alhambra library. The firm's efforts resulted in settlement of the claim at a fraction of plaintiff's alleged damages.
<b><i>Targeted Risk Transfer Strategy in Multi-Party Litigation</i></b>	Defended <b><i>design-build architectural firm</i></b> in multi-million dollar claim brought by HOA of mixed use condominium project in Denver. Claims of professional negligence involved alleged standard of care violations in the <b><i>design of below-grade parking garage and integration of building envelope components</i></b> . The firm's efforts resulted in a settlement built around an alternative repair scope, which was approximately 55% less than claimed damages.
<b><i>Targeted Risk Transfer Strategy in Multi-Party Litigation</i></b>	Defense of <b><i>design-build construction firm</i></b> against HOA lawsuit claiming construction defects stemming from allegedly below standard <b><i>architectural and plumbing/mechanical design</i></b> . The firm's efforts resulted in the settlement of a \$7M plumbing/mechanical claim being resolved for less than \$400K and a settlement of \$5M building envelope claim being resolved for less than \$2M. Client's contribution to total settlement was less than 50%.
<b><i>Construction Defect</i></b>	Successful representation of developer entities responsible for the design and construction of a 389 unit, two tower high-rise mixed use project in downtown Denver. The HOA alleged that the <b><i>design of the plumbing/mechanical system</i></b> , as well as the design of the exterior balconies, failed to meet the standard of care. Through the filing of multiple yet distinct summary judgment motions and specific targeted discovery, the HOA settled its \$16M claim against the firm's clients for less than 4% of the amount claimed.
<b><i>Construction Defect</i></b>	In a third-party litigated matter involving a single-family residence, we successfully defended <b><i>claims of negligence and contribution against a project architect</i></b> for the alleged failure to properly detail the slopes, materials and construction of exterior decks in accordance with UBC waterproofing requirements.
<b><i>Construction Defect</i></b>	Successful defense of builder responsible for <b><i>architectural design</i></b> and construction of multi-family townhome project where the HOA <b><i>alleged deficiencies in the architectural design, details and general notes for the project's exterior cladding</i></b> . Through informal discovery, we developed strong statute of limitations arguments which resulted in a settlement of the claim for approximately 25% of the total damages claimed.

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<p><b><i>Targeted Risk Transfer Strategy in Multi-Party Litigation</i></b></p>	<p>Defended developer in a multi-million dollar claim brought by the HOA for high-rise, mixed-use condominium development in downtown San Diego. Adequacy of both the <b><i>structural and architectural</i></b> plans, details and general notes were primary issues in the case involving the <b><i>design of a below-ground parking structure and deflection of the dwelling unit decks</i></b>. Significant risk transfer efforts resulted in a successful pre-trial settlement for a fraction of plaintiff’s damages despite the fact the project was insured under a wrap insurance policy.</p>
<p><b><i>Construction Defect</i></b></p>	<p>Successful representation of <b><i>landscape architect</i></b> sued for claims involving <b><i>alleged improper design of grading and drainage around large water features</i></b>, as well as claims of professional negligence in the <b><i>design of the water features themselves</i></b>. The claim was amicably resolved through litigation for approximately 75% less than the amount of damages claimed with design professional contributing approximately 10% of total settlement.</p>
<p><b><i>Targeted Risk Transfer Strategy in Multi-Party Litigation</i></b></p>	<p>Defended the general contractor in federal court action involving a large international timeshare resort in Lake Tahoe, California. Plaintiffs sought in excess of multiple 8-figures for property damage and loss of profits/use and economic damages, including substantial <b><i>architectural design issues at the bathrooms and windows</i></b> involving a defunct architect with a burning limits policy. Significant risk transfer efforts and complex timeshare allocation expert analysis resulted in a successful settlement at a fraction of plaintiffs' damages--of which more than 85% was paid by third parties.</p>
<p><b><i>Targeted Risk Transfer Strategy in Multi-Party Litigation</i></b></p>	<p>Defended general contractor of a new multi-structure mixed use development where plaintiff alleged damages in excess of \$47M, including damages stemming from the property’s <b><i>allegedly defective architectural design</i></b> by three separate architects for the three buildings involved; successful targeted risk transfer strategy resulted in favorable settlement at a fraction of plaintiffs’ damages.</p>
<p><b><i>Hawaii Right to Repair Act</i></b></p>	<p>Defending developers of 120 luxury villas for one building which sunk allegedly as a result of <b><i>ancient lava tubes/hydrology and other geotechnical design deficiencies</i></b> and underwent extensive micro-pile and Uretex® retrofit where plaintiff alleged damages in excess of \$35M; successfully dismissed federal and state court actions in favor of binding arbitration. Thereafter, the Firm engaged in strategic discovery including expert depositions where significant damaging testimony was elicited from plaintiffs’ key experts both on <b><i>geotechnical and hydrology</i></b> issues and the reduction in valuation claims (stigma damages) which resulted in a successful settlement at the start of arbitration for less than 2% of the claim which did not cover plaintiffs’ fees and expenses.</p>
<p><b><i>Class Action: Motion for Summary Judgment granted in favor of client</i></b></p>	<p>Defended residential developer in \$43M class action <b><i>geotechnical</i></b> claim in a 550 home development where the plaintiff alleged that the <b><i>slopes surrounding the development were defectively designed</i></b> and installed. Judgment entered for client denying class certification and granting motion for summary judgment.</p>

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<b>Construction Defect</b>	Defended developer/owner in this \$16M+ claim in a 389 unit, two-tower project. The allegations primarily involved inadequate <b>HVAC system design</b> (including excessive refrigerant line lengths and lack of oil traps resulting in premature failure of condensing units); premature failure of numerous hot water tanks as a result of the use of the <b>Aquatherm system</b> (a system which employs a water heater to satisfy both space heating and domestic hot water generation) with an electric water heater as opposed to a gas-fired hot water heater; and using an <b>inadequate sealant product as opposed to traffic-coating at the balconies</b> . Through settlement, our client was essentially absolved of responsibility for the design of the HVAC and Aquatherm systems, and bearing only minor responsibility for the deck sealant product.
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***FOCUS: Try cases that need to be tried***

*PB is not afraid of the courtroom and treats every case as having the potential to be tried, so that each case is prepared as if settlement or dispositive motion will not resolve the case.*

<b>Trial: 2 ½ month Jury Trial</b>	Defended the remaining contractor in <b>product/sulfate/soils</b> construction claim alleging \$12M in damages; jury verdict of \$650K.
<b>Trial: 2 week Jury Trial</b>	Defended general contractor in multi-party negligence and breach of contract case involving a five-star luxury resort where plaintiff alleged damages in excess of \$50M from alleged design and installation construction defects including <b>design of exterior cedar shingle siding over pre-fabricated modular units</b> . After pre-trial motions were successfully argued and a jury selected, the matter settled, ending the estimated three month jury trial.

***FOCUS: Enforce ADR procedures for expedited, cost-efficient results***

*We review all cases to determine if alternative dispute resolution mechanisms can or should be utilized.*

<b><i>Enforced ADR</i></b>	Defense judgment in favor of national developer in arbitration of construction defect action involving project-wide <b><i>structural and geotechnical</i></b> allegations.
<b><i>Enforced ADR</i></b>	Binding arbitration of construction defect and Fair Employment and Housing Administration action involving claims ranging from <b><i>architectural, HVAC design</i></b> and other construction conditions to the assertion of FEHA claims involving alleged bodily injuries and mental distress. Opinion and award issued substantially in favor of developer client on all construction issues and complete defense of homeowners’ FEHA claim.
<b><i>Enforced ADR</i></b>	Favorable settlement following first week of binding arbitration of defect claim involving <b><i>design of modular living and commercial units</i></b> .
<b><i>Enforced ADR</i></b>	Successfully moved to enforce a judicial reference provision over plaintiffs’ objection in construction defect suit. Judicial referee found that plaintiffs failed to provide credible evidence of <b><i>geotechnical and structural defects</i></b> and awarded 12% of the total damages sought.
<b><i>Enforced ADR</i></b>	Homeowner filed lawsuit for alleged construction defects in the <b><i>design</i></b> and construction of a single-family residence. We successfully moved for the matter to be heard through binding arbitration pursuant to the homeowner’s purchase agreement and limited warranty.

***FOCUS: Proactive risk avoidance analysis to reduce future risk exposure***

Implementation of proactive risk management measures through the contract review process enables us to: (1) identify and redraft potentially problematic contract language; (2) create and implement negotiation strategies to afford greater protection; and (3) limit risk.

<b><i>Contract Review</i></b>	Provided analysis of construction contract for commercial winery with recommendations regarding contractor’s change orders, material markups, delay, <b><i>contractor’s error in following plans and specifications, owner’s response</i></b> and available remedies, insurance requirements, and defense and indemnity provisions.
<b><i>Contract Review</i></b>	As part of our review of this AIA agreement, we made recommendations concerning contractor’s liability for defective workmanship, contractor’s delay in completion, and the owner’s rights to liquidated damages if contract was breached. In addition, we prepared amendments to construction agreement to reflect the contractor’s agreement regarding the repair of defective work and the payment of attorneys’ fees.
<b><i>Contract Review</i></b>	Reviewed standard AIA agreement and provided revised language involving <b><i>architect’s responsibility</i></b> for inspection and issuing notices of substantial completion, including steps for handling revised notices of substantial completion when incomplete and/or faulty work was discovered.
<b><i>Contract Review</i></b>	Provided extensive analysis and recommendations for <b><i>design professionals</i></b> during negotiation of new contracts that involved the implementation of repairs to luxury condominium units.
<b><i>Contract Review</i></b>	For one of the firm’s builder clients, we reviewed its standard subcontract agreements and made recommendations to improve the warranty, insurance and consequential damages provisions to protect client’s future interests.
<b><i>Contract Review</i></b>	<b><i>Drafted and negotiated design professional contracts</i></b> , including contract updates and amendments, involving the indemnity, limitation of liability and insurance provisions. Design professionals included <b><i>architects, geotechnical engineers, civil engineers and mechanical engineers</i></b> .
<b><i>Business Entity Formation</i></b>	Reviewed and advised multiple business clients regarding business goals and benefits of different business structures related to real estate investments. Thereafter, drafted several LLCs and California “S” corporations on behalf of clients, including membership agreements, articles of incorporation, by-laws, and other documents to maintain good business standing.
<b><i>Business Entity Formation</i></b>	On behalf of one of the firm’s commercial clients, we analyzed the client’s various business interests and created several limited liability companies, California “S” corporations, and a limited partnership to enhance the client’s growth and long-term financial viability.

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<b><i>Business Entity Formation</i></b>	For one of the firm’s Nevada clients, we initially formed a limited liability company which was later converted into an “S” corporation at the client’s request.
<b><i>Business Entity Formation</i></b>	Creation of several business entities on behalf of multiple business start-ups, including creation of “S” corporations, “C” corporations, limited liability companies, and a non-profit corporation in California and Texas. Included drafting of articles of incorporation, by-laws, operating agreements, and fictitious business name statements.
<b><i>Business Entity Formation</i></b>	Drafting of all documents required to create a single asset limited liability company whose purpose was to act as the owner of a residential condominium project in San Diego.
<b><i>Contract Review</i></b>	For one of the firm’s commercial supplier clients, we reviewed a proposed subcontract agreement and made recommendations to improve the indemnification provisions and ensure their conformance with applicable California law to protect client’s future interests.