

# Jesse R. Lipcius

Partner



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## Practices/Industries

- Construction Litigation
- Construction
- Employment & Labor Litigation
- Real Estate/  
Environmental Litigation

## Education

George Mason University  
(B.S., 2001)  
University of Dayton School  
of Law  
(J.D., 2004)

## Overview

Jesse is a litigator with more than 15 years of experience resolving disputes in the construction, real estate, employment, and financial services environments. He represents a wide variety of clients, ranging from publicly traded companies to developers, specialty contractors, and architects/engineers. Licensed in Ohio, Kentucky, and Illinois, Jesse serves as lead counsel in every aspect of litigation. He has substantial trial and arbitration experience, and practices in front of state and federal courts across the country. He is consistently recognized for his talent as a litigator, including being named to the Ohio Super Lawyers list, *The Best Lawyers in America* for both Construction Law and Litigation – Construction, and as a Cincy Leading Lawyer by Cincy Magazine.

## Experience

- Won judgment as a matter of law for a contractor against a former sales representative, asserting a claim for commissions in excess of \$250,000. The former sales representative was awarded nothing, while the client received judgment against the sales representative in the amount of \$93,227.22 (*Webster & Associates Inc. v. EagleBurgmann KE, Inc.*, 2014 WL 1338569, U.S. District Court for the Eastern District of Kentucky, Memorandum Opinion and Order, April 3, 2014).
- Secured a final, agreed judgment in a major construction litigation concerning the Kenwood Towne Place commercial/mixed-use development in Cincinnati, Ohio, under which the subcontractors/public lien claimants received a significant recovery on the value of their public lien claims asserted against the project, which was a particularly favorable result given that many other subcontractors received little to no compensation for their significant lien claims (*Art's Rental Equipment, Inc. v. Bear Creek Construction, LLC, et al.*, Hamilton County, Ohio, Common Pleas No. A0902785, Agreed Order, February 4, 2013).
- Received summary judgment and successfully defended an appeal for a bank facing tortious interference with inheritance and breach of trust claims in the aggregate of \$2 million (*Thompson v. Butler*, 2013-Ohio-1075, Ohio App. 2 Dist).
- Received summary judgment and successfully defended an appeal for a bank facing consumer claims alleging damages in excess of \$300,000 (*Household Realty Corp. v. Griffith*, Hamilton County, Ohio/First District Appellate No. C-110647, Decision, May 1, 2013).
- Received summary judgment for a bank against a consumer alleging, among other things, claims related to “robo-signing” and fraud (*In re Kreitzer*, 489 B.R. 698, S.C. Ohio 2013).
- Defeated an opponent’s request for injunctive relief against the client/financial services provider after multiple days of evidentiary hearings (*Veteran Payment Systems, LLC, v. National Processing Company*, Jefferson County, Kentucky, Circuit Court No. 11-CI-6634, Order Denying Temporary Injunction, August 2, 2012).

## Experience (Cont)

- Obtained judgment as a matter of law for a surety against an indemnitor for over \$1.7 million after the indemnitor contested liability for the surety's costs and expenses incurred while completing a municipal construction project and settling claims in Cook County, Illinois.
- Received summary judgment and a significant award of money damages for a client/manufacturer of industrial expansion joints against a former sales representative who initiated litigation, seeking several hundred thousand dollars of alleged back commissions.
- Represented the developer of a multimillion dollar mixed-use commercial development against a contractor with lien, contract, and quasi-contract claims of several hundred thousand dollars.
- Received summary judgment for a client and successfully defended an appeal against former customers asserting consumer sales practices violations.
- Represented our nation's largest specialty concrete contractor in arbitration against a material supplier with claims for non-payment.
- Received summary judgment for a bank against a former customer asserting claims under the Fair Credit Reporting Act.
- Received summary judgment in favor of a national banking association and against plaintiffs alleging that the bank interfered with a significant inheritance and breached trust/fiduciary duties.
- Successfully defended a claimant's request for injunctive relief against a financial services provider.
- Prosecuted Miller Act claims against a general contractor and surety.
- Represented subcontractors with entitlement claims concerning work on federal projects.
- Represented a specialty concrete contractor in a claim in excess of \$1.2 million involving delay and scope of work issues on a public airport project.
- Served as owner's designee for the evaluation of potential claims related to the construction of a graphite processing facility.
- Represented a surety in a quia timet action against principals under bonds for neighborhood developments issued in excess of \$500,000.
- Represented the owner of an indoor water park against a construction manager and specialty contractor involving claims for deficient construction in excess of \$500,000.
- Evaluated the potential site conditions claim of a commercial subcontractor in a substantial city revitalization project.
- Defended the principal contractor against a subcontractor in an entitlement claim in excess of \$1 million.
- Represented the principal contractor in a suit involving a principal contractor claim of nearly \$1 million and an owner claim of nearly \$500,000.
- Represented a commercial subcontractor with a \$700,000 lien against a public fund and large mixed-use commercial/retail center in Ohio. The case involved priority, change order, and general contractor negligence issues.
- Defended one of our nation's largest specialty concrete construction companies in a Fair Housing Act case.

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## Experience (Cont)

- Represented a commercial subcontractor with \$350,000 in liens against two large commercial shopping centers.
- Defended a Fortune 500 commercial contractor in multiple worksite injury claims.
- Defended a commercial subcontractor in an Occupational Safety and Health Administration (OSHA) case involving an employee death, including an appeal in the U.S. Court of Appeals for the Sixth Circuit.
- Defended a commercial subcontractor in a worksite wrongful death case.
- Defended a commercial subcontractor in a worksite catastrophic injury case.
- Defended a homeowner against lien claims of \$90,000.
- Represented a homeowner in a case involving significant property damage and personal injury due to a public construction project.
- Prepared mechanic's liens for a nationwide commercial construction materials supplier.
- Defended commercial and residential contractors against construction defect claims.
- Defended a bank and its principals against claims to invalidate a \$1.4 million debt relating to an allegedly mismanaged construction loan.
- Represented a mall owner in a suit involving claims for \$13 million against a commercial tenant.
- Represented a commercial tenant with claims against the landlord for improvements to property in excess of \$5 million.
- Prepares and perfects liens in the residential, commercial, and public sides of construction.

## Presentations

- "Due Diligence When Hiring a Contractor," Ulmer Webinar (2019)
- "Contract Primer for Engineers" HalfMoon Education: Engineering Law and Ethics - Cincinnati, OH (June 2017)
- "Construction Law: What do You do When...?" National Business Institute Seminar (March 2017)
- "If I Build It, You Will Pay: Construction Claims and Coverage Issues," 38th Annual Real Estate Institute - Cleveland Metropolitan Bar Association (November 2016)
- "Construction Defects: Evaluating the Strengths and Weaknesses of a Construction Defect Claim," National Business Institute Seminar (December 2015)
- "Understanding Key Project Issues and How to Manage Them," Ulmer & Berne and Construction Process Solutions, Ltd. CLE (October 2015)
- "Common Claims v. Engineers," FoxMoor/HalfMoon "Managing Engineering Risk and Ethics Issues" Continuing Education Seminar (September 2015)
- "Mechanic's Liens – Preserve Your Rights and Get Paid," Associated Builders and Contractors, Inc., ABC Legal Day (June 2015)
- "Indemnity Provisions: Is the Subcontractor Responsible? What About the Design Professional?" Construction Defect Litigation: From A to Z (November 2014)

## Presentations (Cont)

- “Public Lien Law in Ohio,” Lorman Education Services (June 2014)
- “Resolving Disputes During the Construction Process,” Allied Construction Industries (February 2014)
- “Evidence and Expert Testimony Best Practices: Supporting Your Case,” National Business Institute (October 2013)
- “Determining the Correct Prevailing Wage: State and Federal Projects in Ohio,” Lorman Education Services (September 2011; October 2013)
- “Hidden Obstacles in Ohio’s Statutes Applicable to Construction Cases,” Ohio Association of Civil Trial Attorneys Construction Litigation Committee “Lunch and Learn” (June 2013)
- “Ethical Considerations in Construction Cases—Staying on Track and Out of Trouble,” National Business Institute, Construction Defects Liability in Ohio (November 2012)
- “Overview of Ohio’s Public Construction Reform,” Ohio State Bar Association’s Annual Convention, Cincinnati, Ohio (May 2012)
- “Transactional Issues in Commercial Construction and Real Estate Law,” Guest Lecturer, University of Cincinnati School of Law (April 2012)
- “LEED® For Schools: Ohio’s Commitment to Sustainability,” Ohio Association of School Business Officials 2011 Annual Workshop (April 2011)
- “Green Construction Overview,” 18th Annual Bradley J. Schaeffer Real Property Institute, Real Estate 2010: New Directions, Continuing Trends, Ohio State Bar Association (December 2010)
- “Fair Housing Act Awareness for the Construction Industry,” 2010 Annual Meeting of the Ohio Association of Civil Trial Attorneys (November 2010)
- “The Nuts and Bolts of Green Building,” 2010 Annual Meeting of the Ohio Association of Civil Trial Attorneys (November 2010)

## Publications

- “Statutes of Repose: What Every Contractor Needs to Know,” Co-Author, Construction Executive (February 2020)
- “Update Concerning Cincinnati’s Bidding Requirements For MSD Construction Project,” Ulmer & Berne LLP, *Client Alert* (January 2014)
- “Cincinnati Changes Bidding Requirements Concerning Sewer District, Storm Water, and Water Works Construction Projects,” Ulmer & Berne LLP, *Client Alert* (May 2013)
- “Trial Court Rules That Ohio’s Statute of Repose Does Not Apply to University of Cincinnati’s Construction Claims,” Ulmer & Berne LLP, *Client Alert* (February 2013)
- “Five Points to Consider When Leasing Construction Equipment,” *ACC Lexology* (June 2012)
- “Green Building Law Part I: Getting Acquainted With Net Zero,” Defense Research Institute, *The Critical Path: The Newsletter of the Construction Law Committee*, Volume 15, Issue 1 (February 2012)
- “Construction Lawyers Should Understand ‘Net Zero’ -- Green Building’s Pinnacle of Sustainability,” *Ohio Association of Civil Trial Attorneys, Quarterly Review*, Construction Litigation Committee (Spring 2011)

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## Involvement

### Professional Affiliations

- Ohio State Bar Association
- American Bar Association (*Tort Trial & Insurance Practice Section; Fidelity & Surety Law Committee; Forum Committee on the Construction Industry*)
- Defense Research Institute
- National Association of Homebuilders
- Surety Claims Institute
- Cincinnati Bar Association (*Former Co-Chair of Construction Law Committee*)
- Ohio Association of Civil Trial Attorneys (*Former Co-Chair, Construction Litigation Committee*)
- United States Green Building Council (*Cincinnati Regional Chapter*)
- Ohio Supreme Court's Lawyer to Lawyer Mentoring Program (*Mentor*)
- Dohn Community High School (*Former Member, Board of Directors*)
- Teen Challenge Cincinnati (*Former Member, Board of Directors*)

### Honors & Distinctions

- Named to *The Best Lawyers in America*, Construction Law; Litigation – Construction (2018-2022)
- Designated *Best Lawyers* Litigation – Construction “Lawyer of the Year” in Cincinnati (2022)
- Designated *Best Lawyers* Construction Law “Lawyer of the Year” in Cincinnati (2021)
- Named to the Ohio Super Lawyers list (2020-2022)
- Named to the Ohio Super Lawyers Rising Stars list (2009, 2012-2017)
- Named a Cincy Leading Lawyer in Civil Litigation in a survey of lawyers by Cincy Magazine (2019-2021)
- LEED® Green Associate (Green Building Certification Institute, May 2011-May 2012)

### Admissions

- State of Ohio
- State of Illinois
- Commonwealth of Kentucky
- U.S. District Court of Appeals, Sixth Circuit
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Eastern District of Kentucky
- U.S. District Court, Western District of Kentucky
- U.S. District Court, Northern District of Illinois