



Andrew D. Ness ,Esq.  
Falls Church, Virginia



## Primary Areas of Expertise

Design/Build Projects  
Public-Private Partnerships  
Infrastructure  
Government Contracts  
Construction

### Professional Summary

Highly experienced construction arbitrator, mediator and DRB member with a very extensive range of experience in many different types of large projects, both public and private. Recognized nationally and internationally for skills and judgment in the mediation process, and for crafting creative case-specific solutions to reach agreement.

Substantial experience as both advocate and arbitrator/mediator with megaprojects and very large disputes, including nuclear power projects in U.S. and UAE, and the largest petrochemical complex ever built in a single phase.

### Current Employer-Title

Andrew Ness ADR, LLC - President

### Profession

Arbitrator, Mediator, Neutral Evaluator, DRB Member, formerly a practicing construction and Government contracts attorney for 39 years.

### Work History

Arbitrator, Mediator & Neutral Evaluator, 2019-Present; Partner, Jones Day, 2011-2018; Partner, Howrey LLP, 2008-2011; Partner & Office Managing Partner, Thelen LLP (previously Thelen, Reid & Priest LLP), 2000-2008; Partner and Section Chair, Morgan, Lewis & Bockius LLP, 1987-1999; Partner/Associate, Lewis, Mitchell & Moore, 1979-1987; Law Clerk to the Hon. Robert F. Peckham, Chief Judge, U.S. District Court, N.D. Calif., 1977-1978.

### Construction Industry Experience

Thirty-nine years as a practicing construction lawyer, handling complex construction and Government contracts disputes on major projects worldwide. A partner in four major law firms over the years, the last eight years as a partner in the Washington, D.C. office of Jones Day.

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Neutral ID: 154135

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Assisted owners and contractors in equal measure with troubled projects solving complex construction and design-related problems. Served as lead counsel on a wide variety of very large construction disputes resolved in federal and state courts and via domestic and international arbitrations. 2014-2018, served as lead Construction Partner for the Jones Day Middle East offices in Dubai and Saudi Arabia, representing both Middle Eastern owners and international contractors.

Substantial involvement in projects encompassing a broad range of energy, industrial and process, government, institutional, commercial, and building projects, such as power plants, petrochemical plants, hospitals, shopping malls, and many more. Megaprojects included the only two new nuclear units built in the US in the last 30 years (\$1.5 Billion litigation; \$27 Billion overall), the largest petrochemical complex ever built in a single phase (\$24 Billion overall), multiple large power projects and two very large state of the art replacement hospitals.

Recognized by Chambers USA and Best Lawyers in America since each publication commenced coverage of Construction Law, and was consistently named one of the Global Most Highly Regarded Individuals by International Who's Who of Construction Lawyers.

## **Experience**

Prior to becoming a full-time neutral in 2019, 39 years of highly varied construction law practice, resolving claims and disputes on construction and design/build projects of all kinds, across the U.S. and in 10 foreign countries. Representation of contractors and owners (both private and public) split roughly 50-50, with frequent but less concentrated representation of engineers and subcontractors.

Cases have involved problems with the construction process (changes, delays, disruption, acceleration, differing site conditions, terminations, contract interpretation) as well as both design and construction defects (collapses, repeated equipment failures, shortfalls of performance guarantees). Types of projects include power (nuclear, gas combined cycle, coal-fired), industrial (primarily oil/petrochemicals, pulp & paper and steel industries), hospitals & large health care facilities, commercial/residential (hotels, retirement communities, office buildings, condominiums), hazardous/nuclear waste processing facilities and remediation sites, and numerous Federal government contracts. Extensive experience as lead counsel in federal and state court trials, arbitrations and mediations, including international arbitrations and transnational mediations.

Fellow of the American College of Construction Lawyers; former Chair (2012-13) of the ABA Forum on Construction Law; rated Band 1 by Chambers USA since initial edition.

## **Alternative Dispute Resolution Experience**

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Construction Arbitrations - Disputes ranging from \$2 Million to over \$500 Million on a wide range of projects and megaprojects in 19 U.S.

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states, Middle East, South America, Europe and Asia. Served on 15 occasions as panel chair, five occasions as sole arbitrator, and 16 occasions as panel member.

Megaproject engagements as a neutral to date have included a new rapid transit line, a DOE project to encapsulate radioactive waste in glass logs a major surgical and emergency care center, three large power projects, two TBM wastewater tunnel projects, two large extensively-hardened aircraft hangars for the US Air Force, a state-of-the-art remote-operated distribution center, and a project to convert a large, 40-year old paper mill into a linerboard mill.

Mediator for over 30 major disputes in the U.S. and internationally, with several involving over \$100 Million in dispute.

Neutral Evaluator on major infrastructure projects in four states.

DRB member on seven projects to date, including three as Chair. Projects have included tunnels, 300 MW power plant, and major airport terminal upgrades.

#### **Technology Proficiency**

Regularly conduct preliminary and motions hearings via Zoom or Team and proficient in both platforms.

Generally familiar with the capabilities of Primavera P6 scheduling software, ProCore, and cost reporting programs.

#### **Education**

Harvard Law School (JD, magna cum laude-1977)

Stanford University (BS, Electrical Engineering, with distinction-1974)

#### **Professional Licenses**

Admitted to the Bar: California, Virginia, District of Columbia, numerous Federal District Courts, U.S. Supreme Court and 3rd, 4th and 9th Circuit Courts of Appeal.

#### **Professional Associations**

American College of Construction Lawyers (Fellow and former Board member)

ABA Forum on Construction Law, (Past Chair and Governing Committee Member)

College of Commercial Arbitrators (Fellow)

Fellow, Chartered Institute of Arbitrators

#### **Recent Publications & Speaking Engagements**

Lead editor of "Construction Arbitration; The Advocate's Practical Guide," published by the ABA Forum on Construction Law in 2023, and author of the chapter on "Navigating an International Construction Arbitration." Co-creator of and contributor to "The Construction ADR Toolbox" blog at <https://theconstructionadrtoolbox.com>.

Frequent author of articles on ADR topics, and frequent speaker on ADR and Construction Law issues at meetings of the ABA Forum on Construction Law, College of Commercial Arbitrators, American College

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of Construction Lawyers, and other industry organizations.

### Selected Publications - Books and Book Chapters

Editor, INTERNATIONAL CONSTRUCTION LAW, A GUIDE FOR CROSS BORDER TRANSACTIONS AND LEGAL DISPUTES (ABA 2009)

Editor, FEDERAL GOVERNMENT CONSTRUCTION CONTRACTS 1st ed. (ABA 2003)

“International Dispute Resolution,” (co-author) in CONSTRUCTION LAW HANDBOOK 3RD Ed. (Wolters Kluwer 2018)

“Delay, Suspension of Work And Acceleration,” in FEDERAL GOVERNMENT CONSTRUCTION CONTRACTS, all eds. (ABA Publishing 2017)

“Enforcing Arbitration Agreements,” (co-author) in CONSTRUCTION ADR (ABA 2014)

“Construction Damages,” in FUNDAMENTALS OF CONSTRUCTION LAW, all eds. (ABA 2013).

“Contract Time and Completion,” in CONSTRUCTION LAW 1st & 2nd eds. (ABA 2009)

“Pricing and Proving Delay, Disruption and Acceleration Claims,” (co-author) in CONSTRUCTION SUBCONTRACTING: A LEGAL GUIDE FOR INDUSTRY PROFESSIONALS (Wiley Law 1991)

### Selected Articles

“How Lawyers Build Success,” ENR Viewpoint (McGraw-Hill, June 5, 2013)

“Whither Construction Law? How Can Construction Law Continue to Grow and Evolve in the Era of the Vanishing Trial?,” 30 The Construction Lawyer, No. 3 (2010)

“Arbitration Developments, Defects & Solutions” (co-author), 22 The Construction Lawyer No. 3 (2002)

“Concurrent Delay: The Challenge to Unravel Competing Causes of Delay,” (co-author) 17 The Construction Lawyer No. 4 (1997)

“International Alternative Dispute Resolution,” (co-author) Construction Briefings No. 96-12 (Federal Publications 1996)

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**Locations Where Parties Will  
Not be Charged for Travel  
Expenses**

Washington, DC/Baltimore Metropolitan Area; Orlando/Orange County FL Travel expenses otherwise at cost. Travel time not charged for anywhere that can be reached by plane flight of 90 minutes or less from Washington, DC.

**Citizenship**

United States of America

**Languages**

English

**Compensation:**

Hearing:	\$625.00 per hour
Study:	\$625.00 per hour
Cancellation:	\$3,000.00 per day
Cancellation Period:	30 days
Comment:	\$500 flat travel fee (plus air fare) for destinations involving air travel, but does not apply for destinations within 90 minutes flight time from Washington, DC. Cancellation rate applies for a maximum of 3 hearing days, and is reduced or eliminated when other engagements can be substituted. In the case of postponement, it is at the arbitrator's discretion on whether the parties will be billed for the reserved but unused time.

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