



Giovanni M. Ruscitti ,Esq.
Denver,Colorado



Primary Areas of Expertise

- Complex Construction Disputes
- Oil, Gas and Energy
- Construction Mega Projects
- Healthcare
- M&A

Current Employer-Title

Berg Hill Greenleaf & Ruscitti LLP - Chairman and General Counsel,
Member of Management Committee

Profession

Attorney, Arbitrator, Mediator

Work History

Managing Partner, Berg Hill Greenleaf & Ruscitti, LLP, 2016-Present;
Founding Partner, Berg Hill Greenleaf & Ruscitti, LLP, 2001-Present;
Special Counsel, Porzak Browning & Johnson, LLP, 1999-2001; Special
Counsel, The Husted Law Firm, 1997-1999; Associate, Popham Haik
Schnobrich & Kaufman Ltd., 1993-1997.

**Construction Industry
Experience**

A construction professional with almost 30 years of experience, including serving on the AAA's Mega Construction, Construction, Energy and Complex Commercial Litigation Panels, and specializing in complex construction and commercial litigation, arbitration and mediation, dispute avoidance, construction project contract negotiation and drafting, and claims preparation. Focuses practice on large and complex projects, including numerous Mega and EPC industrial and infrastructure Projects. Is equally comfortable in the boardroom and courtroom, and has negotiated and drafted EPC, P3, MSA, design-assist, design-bid-build, design-build, teaming, consortium, prime, subcontract and other contract forms/agreements up to \$2.6B in value, and litigated, arbitrated and served as a mediator and arbitrator on EPC and other large and complex disputes with hundreds of millions of dollars in dispute on projects with values the billions of dollars. Substantial experience as lead transaction and litigation counsel, as well as a neutral, on industrial plants, power plants, renewable energy projects, utility projects, processing plants, first of its kind (FOIK) projects, cement plants, levee, lock and dam, water storage, water and waste treatment plants, office buildings, mixed use,

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Neutral ID: 158016

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apartments, hotels, condos, broadband, telecommunications, airports, stadiums and sports complex arenas, casino, data center, defense project hospitals, schools, DOT/department of transportation, highway construction, toll, rail, bridge, prisons, mining projects (infrastructure and processing in zinc, silver, gold, and coal), oil and gas, pipeline, wind, biomass, solar projects, fertilizer plants (urea, ammonia, nitric acid), and other infrastructure and Mega projects. Has substantial experience in complex construction disputes, including Federal contracting, Federal at state bid protests, defect, delay, lost productivity, indemnity, breach of contract, differing site condition, COVID, and fraud matters. Is also often called upon by clients during the course of a project as "Project Counsel" to assist as issues arise so that claims can be avoided if possible, and frequently provides training to his clients on understanding and implementing contract terms and conditions, document management (including proper job cost and other construction reports), and claims avoidance and preparation. Has negotiated and advised on financing documents and other agreements and reference documents typically associated with such projects, including those relating to railroad, drainage system, geotechnical investigation, hazardous material/environmental, utility investigation and relocation, groundwater intelligent transportation system infrastructure, and right-of-way issues.

After working in a national law firm, co-founded Berg Hill Greenleaf Ruscitti LLP in 2001, and BHGR has grown into a full service national law firm with offices in Irvine, San Diego, Denver, Boulder, and Cheyenne. Currently serves as the firm's Managing Partner and is the Chair of the firm's National construction practice group. Based in the Denver metro area, is licensed in New York and Colorado, and has a national and international construction law, arbitration and mediation practice. Has worked on construction projects in over 30 states, as well internationally in Canada, Central America, South America and Europe.

Very active in the construction law community nationally, frequently speaking and writing on construction law and arbitration topics, including speaking at the AAA and Construction SuperConference events each year.

Experience

Construction

Substantial experience in representing owners, general contractors, subcontractors, suppliers, sureties, and insurers in complex construction disputes, including defect, delay, lost productivity, scheduling, breach, Bid protest, OCI Mitigation plans, coverage and complex litigation, including airport, broadband/fiber optics, data centers, energy, highway, infrastructure, mining, oil & gas, solar, wind, office building, multi-use, and condo construction projects. Advises clients on policies and procedures, lessons learned, and contracting guidelines. Extensive experience in drafting EPC, Prime, Subcontract, Supplier and Framework Agreements.

Complex Commercial Litigation & Arbitration

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Extensive experience on complex domestic & international litigation and arbitration matters up to \$2.6B in dispute, including matters involving: cybersecurity; cryptocurrency; environmental law; fiduciary duty and corporate governance; healthcare; patents, trademark and copyright infringement, trade secrets, and unfair competition; cannabis; regulatory FTC; SEC; TCPA; FCPA; consumer protection; fraud; ERISA and withdrawal liability; financial transactions; corporate and consumer finance; real estate; and insurance disputes.

Mergers & Acquisitions

Substantial experience with M&A transactions and disputes involving stock and asset purchase agreements, various merger types, reps and warranties, indemnity, purchase price adjustments, working capital issues

Mining/Oil & Gas/Energy/Power

Extensive experience representing producers, suppliers, developers, investors and contractors in mining, oil and gas, power and energy disputes, including master service agreements, contract mining, management, breach of contract, fraud, investment, finance, supply agreement, and royalty litigation.

Substantial experience in: acquisitions and divestitures of operating coal oil & gas, and energy properties and companies; negotiating and drafting purchase and sale documents; project finance; negotiating and documenting financing arrangements; and coal and energy supply agreements, including cost-plus, indexed and market-based pricing contracts.

Corporate/Governance

Extensive experience in litigation involving: buy-sell and shareholder agreements; stock option plans, profits interests agreements, and equity and stocks agreements; corporations/LLCs/JVs/partnerships, and business divorces; employment agreements; corporate governance, fiduciary duty and covenants not to compete.

Commercial Contracts/Transactions/Real Estate/Banking

Substantial experience in as lead counsel in negotiating, structuring, drafting and enforcing various commercial agreements such as master services agreements, forbearance agreements, M&A (stock and asset purchase agreements, and various merger types in many industries), NDAs, financing agreements, professional service agreements, executive employment contracts, physician agreements, teaming agreements, development agreements, JV agreements, and franchise agreements.

Advises clients on organizing business entities, structuring strategic alliances, structuring commercial and IP transactions, and creating and protecting IP rights.

Substantial experience representing companies in connection with private

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placements, financing alternatives, including secured and unsecured credit facilities and debt or equity offerings.

Extensive experience in developing and implementing various exit strategies, including mergers, divestitures and succession planning, and has implemented various corporate restructurings, and re-capitalizations

Substantial experience in all aspects of real estate transactions (office, retail, mall, and mixed-use), including development, leasing, and transactions for regional and national parties.

Project Finance

Substantial experience representing parties in large project finance construction projects.

Alternative Dispute Resolution Experience

Substantial experience in arbitration proceedings through the award in many jurisdictions (including CA, TX, NY, NJ, MA, AZ, FL, OK, IL, IA, UT, NE, CO, TN, OR and WA) in complex construction and commercial arbitration matters before the AAA, ICDR, and other ADR entities with \$10M-\$1B in dispute. This experience includes serving as sole arbitrator and panel member in several hundred arbitrations involving complex, multi-party construction and commercial disputes, including a high profile breach of fiduciary dispute with over \$600,000,000 at issue, healthcare payor/provider dispute with over \$800,000,000 at issue, and numerous large complex mega construction and commercial cases with hundreds of millions in dispute. Experience includes: serving as a sole arbitrator and a panel member on numerous large and complex construction disputes involving delays, disruptions, acceleration, suspension of work, defective design or specifications, differing site conditions, constructive changes, late owner-furnished materials, over-inspection, interference, terminations, subcontractor defaults, and mismanagement, across many industries—industrial plants, power facilities, water and waste systems, defense, healthcare, education, infrastructure, mining, oil and gas, and renewable energy, including MEGA projects, and involving hundreds of millions in dispute; healthcare (Medicare/Medicaid, the Social Security Act, the Budget Control Act of 2011, medical necessity, and payor/provider disputes); intellectual property (copyright, licensing, & royalty disputes); cannabis (construction, financing and M&A); M&A disputes involving stock purchase agreements, asset purchase agreements, various merger types, representations and warranties, indemnity, earnouts, purchase price adjustments, working capital and fraud; credit facilities; finance; project finance; breach of contract; real estate; valuation; environmental; indemnity; fraud; consumer finance and debt; corporate governance and fiduciary duty; trade secret and unfair competition, misappropriation; mining, oil and gas, and energy and renewable energy; resource feasibility; health care; and other complex commercial cases. Significant experience as an arbitrator in handling AI, ESI, third-party

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party pre-hearing discovery, and complex motion practice.

Education

University of Denver College of Law (JD-1993); University of Colorado (MBA, Accounting-1993; BA, Economics-1989).

Professional Licenses

Admitted to the Bar: New York (2017), Colorado (1993); U.S. District Court: District of Nebraska, District of Colorado; U.S. Court of Appeal Tenth Circuit; Federal Court of Claims.

Professional Associations

Fellow, College of Commercial Arbitrators; Best Lawyers (2020-2023); 5280 Magazine Top Construction Lawyers and Hall of Fame; BizWest Top Arbitrator/Mediator; Member of AACE International; American Bar Association (Torts and Insurance Section; Business Section; Litigation Section; IP Section); ABA Dispute Resolution Committee; Colorado Bar Association; New York Bar Association; American Trial Lawyers Association; DRI Complex Commercial Litigation and ADR Subcommittees; 2017/18 Chair of Publications, DRI ADR Subcommittee Rocky Mountain Mining Association; Colorado Mining Association; Associated General Contractors of Colorado - Associate Counsel; Associated General Contractors of Colorado - Legislative Committee; Chair of the Boulder Economic Council; Member of the Board of Directors of the Boulder Chamber of Commerce; Member of Metro Denver Chamber Board of Directors; BizWest - Most Influential Business Leaders in Colorado (2022; 2023).

Recent Publications & Speaking Engagements

Numerous presentations to senior management for corporate clients and organizations on broad range of topics:

"Learning from Each Other: A Roundtable of Arbitrators Discussing Key Arbitration Issues" (College of Commercial Arbitrators Annual Meeting 2024 - San Diego)

"Arbitration Fundamentals and Best Practices for New AAA Arbitrators (Hawaii, 2024)

"Breakfast with General Counsel – What Keeps Them Up at Night in the Era of Emerging Technologies" (AAA Construction Conference, 2024 - Miami)

"Hot Topics for Arbitrators" (College of Commercial Arbitrators Annual Meeting, 2023 - Wash. DC)

"Builder's BootCamp" - Best Practices for Construction Disputes (2023, Northern Colorado)

"The Best Defense is a Good Offense - Keys to Claims Prevention and Mitigation" (Construction SuperConference, 2023 - Miami)

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"Anatomy of a Construction Arbitration" (AAA Case Manager

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Presentation, 2023)

"Breakfast with General Counsel – Collaborating to Minimize Risk from the Construction Team Perspective" (AAA Construction Conference, 2023 - Santa Monica)

"Breakfast with General Counsel – Clients Perspectives in Construction Arbitration" (AAA Construction Conference, 2022 - New York)

"Construction of Alternative Energy Projects: Global Challenges" (Construction SuperConference, 2022 - Las Vegas)

"Failure to Properly Consider Damages Could be Catastrophic for Your Construction Claim - From an Arbitration Perspective (Construction SuperConference, 2021 - Orlando)

"Fireside Chat with General Counsel – Managing Construction Disputes Systematically" (AAA Construction Conference, 2021)

"Preparing for Virtual Arbitration Hearings: Tips and Best Practices for Counsel" (Presentation for AAA, 2021)

"Advocacy in Arbitration 2021: COVID and Beyond" (Presentation for Colorado Bar Association, 2021)

"Customizing Mediation Techniques for Complex Construction Dispute and Avoiding the Mediator Shuffle" (Construction SuperConference, 2019 - Miami)

"Breakfast with General Counsel – Arbitration from the Client's Perspective" (Presentation for AAA, 2019 - Santa Monica)

"Complex AAA Construction Cases - Lessons Learned to Maximize Efficiency" (Presentation for AAA, 2018)

"Simplifying Your Case for Arbitrators and the Value of Formal Arbitration Rules and Administration" (Presentations for AAA, 2018)

"Managing Innovation - The General Counsel's and CEO's Perspective" (Presentation, 2018)

"Managing Risk in Construction Industry" (Presentation, 2018)

"Hot Topics in Construction Industry - 2018 and Beyond" (Presentation, 2018)

"Managing Project Risk - From Contract Negotiation to Dispute Resolution, and All Stages in Between (Presentation, 2018)

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"Defective Defect Laws" (Presentation and Paper, 2016)

"Restrictive Covenants in the Construction World" (Presentation and Paper, 2016)

"Flow-Down Provisions: A Case Study "(Presentation and Paper, 2016)

"Best Practices with UCC Warranties" (Presentation and Paper, 2016)

"Best Practices in Negotiating Environmental Reclamation and Remediation Contracts" (Paper, 2015)

"Issues in Project Finance" (Presentation and Paper, 2015)

"What to Do When a Good Project Goes Bad" (Presentation and Paper, 2014);

Contributing author and/or editor on BHGR articles relating to:

"Construction Industry Best Practices : Adapting to COVID-19," (2020)

"Conflicting Interest Transaction," (2009),

"Buying or Selling a Business? Consider a Non-Compete Agreement," (2009),

"New Patent-ability Standards Post-Bilski Decision," (2009)

"New Ruling in Non-Compete Agreements with Employees," (2009);

Construction Delays - Proving and Pricing Claims, 2003 (Presentation and Paper);

Liability of Surety for Loan to Principal from Estate, The Law of Probate Bonds, 2001 (ABA TIPS Section);

Good Faith and Fair Dealing - Rocky Mountain Handbook, 1997;

Contributing author, "Law and Economics," ECONOMICS, Byrns and Stone, 5TH ed.,

Citizenship

United States of America

Languages

English, Italian

Compensation:

Hearing: \$595.00 per hour

Study: \$595.00 per hour

Cancellation: \$2,500.00 per day

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Cancellation Period:

30 days

Comment:

To help defer the costs of arbitration,
travel time will not be charged.

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