

## **SURETY AND BOND CLAIMS**

Our construction team has the legal and practical skills needed to resolve all matters surrounding troubled construction projects, public and private. On behalf of sureties and bond claimants, our construction team assists in resolving performance and payment bond disputes, including scope, notice and limitations issues. On public projects, we litigate against governmental owners and with other claimants in federal court (Miller Act) and in state courts (statutory bond claims). We also negotiate takeover agreements, completion contracts, workout agreements and secured lending for financing completion and claims resolution. In addition, we regularly handle debtor-in-possession financings and work to secure favorable treatment for our clients in the bankruptcy courts.

### **REPRESENTATIVE MATTERS**

Faced with myriad problems, including the termination of its general contractor (GC) on a \$30 million HUD-financed nursing home project in New York, the GC's filing of a chapter 11 and criminal charges against the company principals, the GC's bonding company turned to Cole Schotz for help. We negotiated complex takeover and completion contracts, resulting in completion of the troubled project. Working closely with the client and its consultants, we also resolved dozens of subcontractor and supplier claims.

With several million dollars in anticipated losses on its payment and performance bonds, our surety client invoked its indemnity rights to seek pre-judgment security for losses. Bringing suit in the New York Supreme Court, our construction team succeeded in obtaining an Order requiring the posting of a \$10 million letter of credit equal to estimated losses, and later obtained recoveries in the United States Bankruptcy Court for the Southern District of New York. In unrelated matters, we obtained dismissals of adversary proceedings filed against the surety asserting preference claims, and defended against a so-called "channeling" injunction, which indemnitors interposed to avoid personal liability.

When a global logistics company was unable to get the project surety to respond to its performance bond claim, it sought assistance from our construction team. The logistics client presented its performance bond claim when its rigging subcontractor, hired to dismantle a steel plant for overseas shipment, defaulted on its contract. After negotiations proved fruitless, we started suit in the Federal District Court and demanded expedited arbitration. The surety agreed to mediate. By structuring the mediation to include streamlined, targeted discovery of the surety's underwriting and investigative files, we were able to achieve a prompt, successful recovery, and saved our client substantial litigation and arbitration expense.