

## **SURETY AND INSURANCE**

Our highly experienced Surety & Insurance Practice Group has the legal and practical skills needed to resolve all matters surrounding troubled construction projects, public and private. Whether representing the surety, owner, contractor or construction professional, we keep our focus on cost-effective dispute resolution, striving to achieve the best outcome for our clients through negotiation, litigation, arbitration or mediation.

On public projects, we litigate against governmental owners and with other claimants in federal court (Miller Act) and in the state courts in New Jersey, New York, Delaware and Maryland (statutory bonds). In several cases, we have obtained precedent-setting decisions in the trial and appeals courts.

On behalf of sureties and bond claimants, we assist in resolving performance and payment bond disputes, including scope, notice and limitations issues. 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.

In insurance coverage disputes, we assist clients in recovering under commercial policies, and defend insurers against unjustified claims and mitigate losses.

## SURETY AND INSURANCE (Continued)

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### 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 us. Through complex negotiations, we were able to work out successful 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, our surety client invoked its GAI rights to seek pre-judgment security for losses. Bringing suit in the New York Supreme Court, we 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 surety law practice group. 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 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.

A chemical industry client entrusted its logistics to an outside agent, which negotiated with land, sea and air carriers, reviewed its invoices and submitted weekly payment requests for approved payments due the vendors. The client funded the approved payments with weekly wire transfers. The arrangement worked well until the client discovered the logistics agent had used the wire directions to divert funds. After the carrier rejected our client's claim under its crime policy, we filed a declaratory judgment lawsuit and the carrier asked us to mediate the dispute. The mediation resulted in a favorable settlement mitigating a substantial portion of the loss.