

# Snell & Wilmer

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## Michael J. Baker

Partner | Orange County | Los Angeles

Tel. 714.427.7472 OC

Tel. 213.929.2644 LA

[mjbaker@swlaw.com](mailto:mjbaker@swlaw.com)

## Main Bio

With more than 25 years of experience dedicated to the area of construction law, Mike Baker focuses his practice on the representation of design professionals, engineers, general contractors and public and private owners. His experience includes providing representation for business and contractual matters as well as disputes before arbitration panels, mediators and trial courts. He has also acted in the capacity of mediator, arbitrator, and served on project dispute resolution boards on selected building programs and projects.

Mike's transactional experience in both construction and design-related matters includes drafting contracts related to project delivery methods as well as drafting building program management agreements and construction management agreements for building programs ranging from \$200 million to over \$1 billion on behalf of contractors, design teams and owners. His experience as a trial lawyer is shown by having brought 20 cases to trial for decision or verdict, including venues in 11 different counties in the State of California and trials in multiple federal circuit court districts in California and the Ninth Circuit Court of Appeals. Additionally, Mike has arbitrated numerous cases in private arbitration on behalf of contractors, owners, engineers, architects, construction managers involving building and civil works.

## Education

- Pepperdine University School of Law (J.D., 1984)
- DePaul University, Chicago (B.A., 1981)

## Professional Memberships & Activities

- State Bar of California
- Construction Management Association of America (CMAA), Southern California Chapter (2009-present)
  - Past Chapter President (2013)
  - Board Member (2007-present)
- CMAA, Southern California Foundation Board
  - Founding Member
  - Board Member (2010-present)
  - Past Treasurer
- Engineering Contractors Association (ECA)

- Board of Directors (2019)

## Representative Presentations & Publications

### Presentations

- "The *Dynamex* Decision Revisited," Presenter, CMAA Southern California Chapter Legal Seminar, Long Beach, CA (August 29, 2019)
- "How Far is Too Far? Politics in Public Works Contracting," Presenter, Engineering Contractors' Association Legal Seminar, Anaheim, CA (April 19, 2019)
- "2019 Construction Law Update," Co-Presenter, CMAA Southern California Chapter Legal Seminar, Long Beach, CA (March 7, 2019)
- "Did *Dynamex* Destroy the Independent Contractor Model? How *Dynamex* Affects Your Project," Co-Presenter, CMAA Southern California Chapter Legal Seminar, Long Beach, CA (October 4, 2018)
- "Expanded Contractor Liability for Subcontractor Wages & Benefits – Private Works Construction," Brown & Streza, Irvine, CA (February 16, 2018)
- "Construction Law Update: What You Need to Know," CMAA Southern California Chapter Legal Seminar, Long Beach, CA (February 8, 2018)
- "Keys of Negotiation," CMAA Southern California Chapter Legal Seminar, Long Beach, CA (October 26, 2017)
- "Alternate Project Delivery Under California Law," CMAA Southern California Chapter Legal Seminar, Long Beach, CA (October 19, 2017)
- "Mechanics Liens - Stop Notices - Bonds: Tools and Concepts to Get Paid " CMAA Southern California Chapter Legal Seminar, Long Beach, CA (October 20, 2016)
- "Managing Engineering Risk and Ethics Issues," Faculty, Half Moon Education, Irvine, CA (August 2015)
- "Limiting Liability and Exposure," Arizona Society of Engineers Annual Meeting, Tucson, AZ (June 2015)
- "Overview of Public Private Partnerships (P3) Project Delivery," CMAA Owner's Roundtable, Long Beach, CA (June 2015)
- "California Construction Legislation Update," CMAA Owner's Roundtable, Los Angeles, CA (February 2015)
- "Construction Claims Trends and Legal Update," CMAA Owner's Roundtable, Long Beach, CA (October 2014)
- "Negotiating Surety Takeover Agreements," Owner's Perspective Panelist, Pearlman Association, Seattle, WA (September 2014)
- "Ethical Issues in Construction Management," Legal Seminar, CMAA, Los Angeles, CA (February 2013)
- "Contractor Pre-Qualifications," Legal Seminar, CMAA, Los Angeles, CA (May 2012) and San Diego, CA (November 2012)
- "Tools and Concepts – Getting Paid," Legal Seminar, Low Income Housing, Thousand Oaks, CA (November 2012)
- "Contractor Pre-Qualification," Legal Seminar, CMAA, San Diego, CA (October 2012)
- "Contractor Pre-Qualification," Legal Seminar, CMAA, San Diego, CA (May 2012)

- “Awards & Protests – Best Value Selection,” Spring Legal Affairs, Airport Council International NA – Airport General Counsel, Charleston, SC ( May 2012)
- “IPD – Myth or Solution,” Legal Seminar, CMAA, Los Angeles, CA (July 2010)
- “Contracting Issues Involved in Complex Projects,” Legal Seminar, CMAA, Los Angeles, CA (September 2009)
- “Legal Risks, Issues in Green Architecture for Architects,” Legal Seminar, Construction Specification Institute, Los Angeles, CA (September 2009)
- “Integrated Project Delivery – CM’s Point of View,” Legal Seminar, Construction Specification Institute, Los Angeles, CA (September 2008)
- “The Legal Aspects of LEED,” Legal Seminar, Beverly Hills Bar Association, Beverly Hills, CA (May 2008)
- “Building Information Modeling and Legal Issues,” Legal Seminar, Annual Conference Association of California Construction Managers, Newport Beach, CA (June 2008)
- “LEED & Green Building - Getting Down to the Real Issues,” Legal Seminar, CMAA, Long Beach, California (May 2008)
- “Change Orders, the Inevitable Reality,” Legal Seminar, CMAA, San Diego, CA (March 2008)
- “Construction Insurance & Professional Liability of the CM,” Legal Seminar, CMAA, Los Angeles, CA (January 2008)
- “LEED Certification Hidden Pitfalls and Unexpected Costs of Going Green,” Legal Seminar, Annual Conference Community College Facility Coalition, Sacramento, CA (November 2007)
- “How Design Documents Can Prevent or Cause Construction Claims,” Legal Seminar, City of Oxnard, Oxnard, CA (March 2007)
- “What You Should Know About False Claims,” Legal Seminars, CMAA, San Diego, CA (February 2007)
- “How Does the AGC Lump Sum Contract Compare to the AIA Stipulated Sum Contract?,” Associated General Contractors, Westlake, CA (January 2007)
- “Construction Insurance & Professional Liability of CM,” Legal Seminar, CMAA, Los Angeles, CA (October 2006)
- “Contractor’s Legal Forum, Written Change Order Requirement,” AALRR Legal Seminar, Cerritos, CA (October 2006)
- “Construction Management/Design Build In California,” Lorman Education, Los Angeles, CA (August 2006)
- “Proving & Defending Construction Claims,” Seminar, CMAA, San Diego, CA (May 2006)
- “How Design Documents Can Prevent or Cause Construction Claims in California,” Lorman Education, Los Angeles, CA (April 2006)
- “Ways to Limit Liability and Exposure,” National Building Conference, Chicago, IL (December 2005)
- “Managing the Construction Claim,” Legal Seminar, CMAA, Los Angeles, CA (November 2005)
- “Protecting Your Rights in Contracts,” Southern California Contractors Association (September 2005)
- “Proving and Defending Construction Claims,” Legal Seminar, CMAA, Los Angeles, CA (August 2005)
- “Construction Management/Design Build in California,” Legal Seminar, Lorman Education, Los Angeles, CA (August 2005)

- “AIA Contracts in California - Understanding the Issues,” Lorman Education Institute (February 2005)
- “Advanced California Construction Law,” National Business Institute, Anaheim, CA (May 2004)
- “Prevailing Wage Law in Public Works Construction,” City of Riverside, CA (March 2004)
- “The Challenges Which Lenders Face with Respect to the Recent Mold Phenomena,” American College of Mortgage Attorneys, The Greenbrier, White Sulphur Springs, WV (October 25, 2003)
- “Emerging Issues In California Indoor Air Quality and Toxic Mold Litigation,” National Business Institute, Anaheim, CA (September 29, 2003)
- “Legal Aspects for Engineers,” CPEI, California Construction/Design Law, Continuing Education Course Teacher (July 27, 2003)
- “Mold Insurance Coverage-A Growing Concern,” Real Estate Owned Managers Association (REOMAC) National Conference, Indian Wells, CA (March 17, 2003)
- “Emerging Issues in Mold and Indoor Air Quality Claims,” CREW (California Women in Real Estate), Speakers Forum, Los Angeles Chapter – Los Angeles, CA (March 11, 2003)
- “Advanced California Construction Law,” National Business Institute, Anaheim, CA (February 27, 2003)
- “Emerging Issues In California Indoor Air Quality and Toxic Mold Litigation,” National Business Institute, Los Angeles, CA (January 31, 2003)
- “Observation and Inspection – Legal Issues and Guidelines,” California Construction Inspectors Association, Los Angeles, CA (November 11, 2002)
- “Emerging Issues in Toxic Mold Litigation in California,” National Business Institute (September 13, 2002)
- “Advanced California Construction,” Law Speakers Forum – National Business Institute (July 10, 2002)
- “Termination: Is It Worth It?” Structural Engineer (February 2002)
- “Construction Law: What Do You Do When...?” Speakers Forum, National Business Institute (January 30, 2002)
- “Mediating Multi-Party, Complex Cases: Overcoming the Challenges of Management and Resolution,” Masters Forum, Straus Institute for Dispute Resolution (October 6, 2000)
- “The Successful Healthcare Construction Project,” Speakers Forum, California Society of Healthcare Engineers, National Conference, Napa, CA (May 4, 2000)
- “State Senate Bill (SB) 1953 – The Legal Perspective,” Speakers Forum, California Society of Healthcare Engineers, Los Angeles Chapter (January 27, 2000)
- “State Senate Bill (SB) 1953 – The Legal Perspective,” Speakers Forum, Architects for Healthcare (AIA) Los Angeles Chapter (January 19, 2000)
- “State Senate Bill (SB) 1953 – The Legal Perspective,” Speakers Forum, California Society of Healthcare Engineers, Orange County Chapter (September 24, 1999)
- “State Senate Bill (SB) 1953 – The Legal Perspective,” Speakers Forum, California Society of Healthcare Engineers, Inland Empire Chapter (June 17, 1999)
- “State Senate Bill (SB) 1953 – The Legal Perspective,” Speakers Forum, California Society of Healthcare Engineers, San Diego Chapter (May 12, 1999)
- “Architectural Engineering Malpractice Defense,” National Business Institute (1997)
- “Indoor Air Quality Issues,” National Business Institute (1997)

- "Homilies for Successful Mediation," Los Angeles County Bar Association (1997)
- "Performance Specification Issues and Problems," Associated General Contractors & Orange County Bar Association (1997)
- "Architectural Engineering Malpractice Defense," American Institute of Architects (1996)
- "Drafting Agreements for Transmission & Use of Electronic Data," American Institute of Architects (1996)
- "Professional Liability for Computer-Assisted Mistakes in Design and Construction," American Institute of Architects (1995)

## Publications

- "[The Brave New World of Determining Independent Contractors in California](#)," Author, Under Construction (October 2019)
- "[Warning! Danger Ahead for Public Entities](#)," Author, Under Construction (April 2019)
- "[California Clarifies Subcontractor Substitution Hearing Procedures and Standard of Review](#)," Author, Under Construction (January 2019)
- "[Teaming Up? Avoid Unenforceable Agreements to Agree](#)," Author, Lorman (December 14, 2018)
- "[California Supreme Court Clarifies "Good Faith Dispute" Under California's Prompt Payment Law](#)," Author, Lorman (November 28, 2018)
- "[Teaming Up? Avoid Unenforceable Agreements to Agree](#)," Author, Under Construction (September 2018)
- "[California Supreme Court Clarifies "Good Faith Dispute" Under California's Prompt Payment Law](#)," Author, Under Construction (July 2018)
- "[California Viewpoint: Potential Loophole To New Unpaid Benefits Law](#)," Co-Author, ENR California (May 22, 2018)
- "[Subcontractor Wages: Closing the Loopholes](#)," Co-Author, Snell & Wilmer Legal Alert (May 14, 2018)
- "[Important California Contracts Reminder – You Must Update and Review Your Private Works California Construction Contracts for 2018](#)," Author, Under Construction (March 2018)
- "[California Appellate Court Finds Contractor's Delay Damages Covered Under a CGL Policy](#)," Author, Under Construction (December 2017)
- "[Contractors on Private Works Now Liable for Unpaid Wages Owed by its Subcontractors](#)," Co-Author, Snell & Wilmer Legal Alert (October 24, 2017)
- "[Calif. Proposed Border Wall Law: Questions For Contractors](#)," Co-Author, Law360 (August 16, 2017)
- "[SB-30 and its Implications for Doing Public Work Construction for the State of California - Another Risk to Manage](#)," Co-Author, Snell & Wilmer Legal Alert (June 12, 2017)
- "[Highlights of the AIA 2017 Updates of its Construction and Design Agreements](#)," Author, Under Construction (June 2017)
- "[Subcontractor Bid and Promissory Estoppel in California Take an Unexpected Turn](#)," Author, Under Construction (March 2017)
- "[New California Construction Laws for 2017](#)," Co-Author, Under Construction (December 2016)
- "[The Protest 'Nightmare': Why Construction Projects Can Be Magnets for Controversy](#)," Quoted, Construction Dive (August 25, 2016)
- "[California Court Reviews Sufficiency of Proof of Construction Claim Damages and Adopts \*Eichleay\*](#),"

Author, Under Construction (June 2016)

- "[Innovative Construction Contracting Formats - Will They Succeed?](#)" Author, Orange County Business Journal (May 9, 2016)
- "Moving Forward with Design-Build in California," California Special District Association (May-June 2015)
- "Legal Counsel Q & A," Structural Engineer (May 2003-2014)
- "Early Warnings," Construction Today (February 2012)
- "American Bar Association: The Law of Green Buildings: Regulatory and Legal Issues in Design, Construction, Operations and Financing," Green Materials and Construction Chapter (August 25, 2010)
- "Mind Your P's and Q's - Why a Good Construction Lawyer Can Be Worth Their Weight in Gold," Construction Industry Forum Roundtable, California Constructor (July 2007)
- "When Is a Change Order Final?" CMAA Legal & Legislative Newsletter (Spring 2006)
- "Protecting Your Rights in Contracts," Southern California Contractors Association (September 2005)
- "California Prop. 39 - Application of School Bond Funds to Pay Employee Costs," CMAAdvisor (Winter 2005)
- "Contracts Can Support the CM's Leadership Role," CMAAdvisor (Summer 2004)
- "When Is a Change Order Final?" CMAAdvisor (Spring 2003)
- "Staking a Construction Claim – Contractual Obligation, Documentation, Negotiation and Resolution," Commercial Building (March 2002)
- "California Supreme Court Rules that Public Contracts Cannot Be Abandoned," Structural Engineer (March 2002)
- "A Landmark Decision – The California Supreme Court Issues a Decision Affecting Building Contractors and the Theory of Contract Abandonment," Builder & Developer (March 2002)
- "Design-Build – False Prophecy of a Claims-Free Benefit?," California Real Estate Journal (February 4, 2002)
- "Supreme Court Overturns Appellate Court Ruling on Contract Abatement," California Construction Link, Courtroom Corner (February 2002)
- "Termination: Is It Worth It?" Structural Engineer (February 2002)
- "Claim Exposure for Building Associated Illnesses," Structural Engineer (January 2002)
- "Understanding Liquidated Damages," Structural Engineer (December 2001)
- "Construction Claims: Part Two – When is a Change Order Final?" Structural Engineer (November 2001)
- "Licensing and Design-Build – Getting it Right Means Knowing the Law in Each State," Commercial Building (October 2001)
- "Design-Build: Not Always Claims-Free," Commercial Building (October 2001)
- "Terrorist Attacks and Insurance," Structural Engineer (October 2001)
- "Construction Claims: Part One – Contractual Obligation, Documentation, Negotiation, Resolution," Structural Engineer (September 2001)
- "Licensing and the Design-Build Process," Structural Engineer (August 2001)
- "Alternate Dispute Resolution – Knowing and Understanding Your Contract Provisions," Structural

Engineer (July 2001)

- “Extent of Responsibility: Exposure Beyond Employment,” Structural Engineer (June 2001)
- “Resolving Claims: A Project Engineer’s Role,” Structural Engineer (May 2001)
- “The Paper Chase: Exposure to Change Orders,” Structural Engineer (April 2001)
- “Technology and the Standard of Care,” Structural Engineer (March 2001)
- “Managing Risk – How to be Profitable,” Structural Engineer (February 2001)
- “Professional Liability – Covering Your Bases,” Structural Engineer (January 2001)
- “Malpractice Defense Measures,” Structural Engineer (December 2000)
- “Observation or Supervision? – Responsibility on a Job Site,” Structural Engineer (November 2000)
- “Design-Build: False Prophecies or Claims-Free Benefit?” Builder & Developer (October 2000)
- “Crossing the Line: A Moral Victory without Precedent,” Structural Engineer (October 2000)
- “Law Firm Records A Major Victory,” Daily Pacific Builder (October 18, 2000)
- “Design-Build: A False Prophecy or a Claims-Free Benefit?” Structural Engineer (September 2000)
- “Appellate Court Delivers Public Entities a Blow,” California Construction Link (September 2000)
- “Allocating Risk Properly In Construction Projects,” Builder & Developer (September 2000)
- “Design-Build: Is It a False Prophecy?” Real Estate Finance Journal (Fall 2000)
- “Joining Forces – The Grim Reality of Some Mergers and Acquisitions,” Structural Engineer (August 2000)
- “The Paperless Project – Potential Liabilities,” Structural Engineer (July 2000)
- “Performance Specifications – Issues and Problems,” Structural Engineer (June 2000)
- “Controlling Today’s Costs on Yesterday’s Projects,” Structural Engineer (May 2000)
- “Mediation – Guidelines for Resolving Disputes,” Structural Engineer (April 2000)
- “Allocating Risk – Guidelines for Preparing Documents,” Structural Engineer (March 2000)
- “A Major Hurdle for California’s Hospitals,” San Diego Union Tribune (OP/ED) (February 29, 2000)
- “Protecting Your Legal Rights in Contracts,” Structural Engineer (February 2000)
- “How to Control Today’s Costs for Yesterday’s Projects,” Co-author, Professional Roofing (January 2000)
- “Allocating Risk Properly in Construction Projects,” Builder & Developer (December 1999)
- “Can Blue Do Better? Tips on How the New Transit Line Can Avoid MTA’s Construction Woes,” Pasadena Star-News (November 4, 1999)
- “Allocating Risk Properly in Construction Projects,” Daily Pacific Builder (October 8, 1999)
- “How to Control Today’s Costs for Yesterday’s Project (Part II),” Co-Author, California Construction Link (April 1999)
- “How to Control Today’s Costs for Yesterday’s Project (Part I),” Co-Author, California Construction Link (March 1999)
- “How to Control Today’s Costs for Yesterday’s Project,” Co-Author, Builder & Developer (February 1999)
- “Joining Forces – Mergers Can Create Stronger Firms, or Alphabet Soup,” Architecture Magazine (December 1998)

- “Fundamental Changes – Cost Overruns on Public Projects Call for Course Corrections,” California Real Estate Journal (December 1998)
- “Q&A: The Dilemma of Cost Overruns on Public Projects,” Orange County Reporter (October 30, 1998)
- “Homilies for Successful Mediation,” Real Estate Finance Journal (Fall 1998)

## **Professional Recognition & Awards**

- Chambers USA: America's Leading Lawyers for Business<sup>®</sup>, Construction Law (2008-2019)
- California Super Lawyers<sup>®</sup>, Construction Law (2009, 2011)

## **Community Involvement**

- CMAA Southern California Chapter Foundation, Vice Chair of Charity Golf Event

## **Bar Admissions**

- California

## **Court Admissions**

- Supreme Court of California
- United States Supreme Court
- United States District Court, All Districts of California
- United States Court of Appeals, Ninth Circuit