

Miller | Schirger LLC

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Toby C. Hausner

Toby focuses his practice on complex business and commercial disputes with an emphasis on construction litigation. Toby represents businesses and individuals nationwide in state and federal courts and before arbitration panels. In his construction practice, Toby represents owners, general contractors, subcontractors, engineers, architects, and suppliers in disputes involving constructive changes, acceleration, excusable and compensable delays, differing site conditions, terminations for default, structured settlements, performance and payment bonds, and mechanic's liens.

Toby obtained his Bachelor of Arts in Political Science (*cum laude*) from Truman State University, and obtained his J.D. (*magna cum laude*) from the Creighton University School of Law. Toby excelled in Creighton's litigation program and was inducted into the National Order of the Barristers and recognized as an Honorable Lyle E. Strom Scholar in Trial Advocacy. In 2019, Toby was nominated by his peers as a Rising Star - Super Lawyers on a yearly basis since 2019.

Toby is a native of Kansas City where he currently resides with his wife and his two children.

AREAS OF PRACTICE

- Commercial Litigation
- Construction Law
- Construction Litigation
- Insurance Litigation
- Real Estate Litigation

BAR ADMISSIONS

- Kansas
- Missouri
- U.S. District Court for the District of Kansas
- U.S. District Court Western District of Missouri

EDUCATION

- Creighton University School of Law
 - Juris Doctor (*Magna Cum Laude*) – 2014
 - *Creighton Law Review* – Research Editor
- Truman State University

- Bachelor of Arts (*Cum Laude*) – 2010

HONORS & AWARDS

- Rising Star, Super Lawyers, 2019-2020
- Order of the Barristers
- Honorable Lyle E. Strom Scholar in Trial Advocacy
- Dean's Academic Scholarship
- Winthrop and Frances Lane Foundation Scholarship
- Francis and Margaret Cudahy Family Scholarship
- Patrick and Mary Rensch Endowed Scholarship
- CALI Excellence for the Future Awards:
 - Contracts I
 - Copyrights
 - Federal Income Taxation
 - The Law of Church and State
 - Professional Responsibility
 - Secured Transactions

PROFESSIONAL ASSOCIATIONS & MEMBERSHIPS

- American Bar Association
- Missouri Bar Association
- Kansas City Metropolitan Bar Association

REPRESENTATIVE CASES

Commercial Building Construction – Construction Defects

Represented concrete subcontractor in eight-party dispute regarding claims of defective construction of a commercial building in Johnson County, Kansas. Prosecuted claims for payment for work performed; defended against claims of defective construction. Favorable settlement reached prior to trial. District Court of Johnson County, Kansas (2013)

Hangar Complex – Delays and Design Defects

Represented pre-engineered metal building subcontractor in \$800,000 claim against general contractor regarding the construction of an aircraft hangar complex for breach of contract; defended against claims of defective design and delays in performance of work. Obtained affirmative recovery for client; amount is confidential. American Arbitration Association (2014)

Hotel Construction – Delays, Design Defects, and Negligent Construction

Represented shoring subcontractor responsible for installing shoring wall for the construction of an Austin hotel in \$1.5 million dispute with the general contractor and excavation contractor stemming from claims of delay and remediation expenses associated with a movement in the shoring wall. Prosecuted claims of breach of contract and quantum meruit; defended against claims of defective design and negligent construction. Confidential settlement prior to trial. District Court of Travis County, Texas (2015)

Jet Engine Test Facility – Cardinal Change, Interference, and Delay

Represented EPC contractor in approximately \$10 million dispute with specialty systems subcontractor regarding EPC contractor's claim that subcontractor performed defective work and delayed the project and subcontractor's claim of extra work, cardinal change and interference during the construction of a jet engine test facility in Ohio. After 28 days of arbitration hearing, achieved favorable settlement. American Arbitration Association (2015)

Manufacturing Plant – Delays and Construction Defects

Represented concrete subcontractor in a dispute in excess of \$1 million with the general contractor contesting the responsibility for delays to project completion caused by inclement weather, design errors and deficient precedent work to a manufacturing plant in Dillon, South Carolina. The parties reached a settlement through alternative dispute resolution for a substantial majority of the concrete subcontractor's claim prior to arbitration hearing. American Arbitration Association (2015)

Retail Building Construction – Delays and Construction Defects

Represented mason subcontractor in \$900,000 dispute with the general contractor regarding damages to commercial building in Johnson County, Kansas alleged to have been incurred due to defects in the mason work and resultant delays. Prosecuted claims against general contractor for delay expenses and additional work performed at its direction; defended against claims of defective work and delay. Confidential settlement obtained prior to trial through mediation. District Court of Johnson County, Kansas (2015)

Wastewater Lagoon – Defective Construction and Property Damage

Represented synthetic liner installation contractor against claims by the owner of a wastewater lagoon in Oklahoma for defective work alleged to have caused approximately \$1.5 million in damage to property. Defended against claims for damage; prosecuted claims against insurance carriers. Confidential settlement reached prior to trial. United States District Court for the Western District of Missouri (2015)

Employee Compensation Dispute

Represented employer in dispute with employee regarding satisfaction of bonus agreement terms, requiring completion of work through company acquisition. Confidential settlement prior to trial. Circuit Court of Jackson County, Missouri (2016)

Natural Gas Plant Construction – Negligent Supervision and Negligent Misrepresentation

Represented EPC contractor in \$21 million dispute with international inspection services provider for failing to identify and report deficiencies in pipe fabrication process on a project in Tennessee. Confidential settlement obtained prior to trial through mediation. United States District Court for the Western District of Tennessee (2016)

Road Reconstruction – Defective Specification and Delays

Represented specialty shoring subcontractor in a dispute with general contractor regarding claims of alleged delay on two highway projects. Following a one-week arbitration hearing, obtained arbitration award of approximately \$900,000 for the full outstanding contract balance, plus all claimed additional delay expenses, and its attorney fees and interest. American Arbitration Association (2017)

Bid Contest – Temporary Restraining Order and Preliminary Injunction

Represented sanitary sewer subcontractor in bid contest against a Kansas municipality, contesting the award of the project to another bidder. Obtained a temporary restraining order and preliminary injunction against the municipality from proceeding with construction of the project. Favorable settlement prior to trial. United States District Court for the District of Kansas (2019)