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# ATTORNEY AT LAW

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MAGAZINE®

**Peel Brimley, LLP**  
Construction Law  
Firm of the Month

**ALSO INSIDE:**  
Special Section  
Construction & Real Estate Law

**Shemilly Briscoe**  
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**FEATURES:**  
Bremer Whyte Brown  
& O'Meara, LLP

**Cotton Driggs Walsh Holley**  
Woloson & Thompson

**Snell & Wilmer**

**Tips From The Top**  
Barbara E. Buckley, Esq.



# A Passion For Construction Law

Story by Dan Baldwin, Photography by Eric Jamison/Studio J Inc

**Peel Brimley** LLP.  
A LIMITED LIABILITY LAW PARTNERSHIP



Michael Brimley and Richard Peel

**W**hen owners want construction projects to succeed or when contractors and subcontractors become entangled in construction claims -- that is where you can expect to find Peel Brimley LLP's founding partners, Richard L. Peel and Michael W. Brimley. "Construction law is our passion," says Peel, who has been in the construction industry since childhood at his father's construction company. "We have been practicing construction law our entire careers," says Brimley, noting that "many of our attorneys have come from specific backgrounds and education in construction law, including engineers, construction managers and construction claims consultants who have made a living building construction projects and assessing construction issues."

Peel Brimley is a Nevada-based construction law firm with offices in Henderson, Nevada and Seattle, Washington. "We represent clients across the western United States," says Peel, who is licensed in Nevada, Arizona and Utah and who recently

became licensed in North Dakota to accommodate expanding client needs. Brimley is licensed in Nevada, California and Hawaii, and recently passed the Utah bar to act as lead counsel for construction of the Salt Lake City International Airport expansion project. "We try to go wherever we are needed," Brimley says.

Peel Brimley employs fourteen attorneys with licenses in multiple jurisdictions across the western United States. Brimley says, "We try to hire lawyers with construction knowledge and experience. We want people who know the construction industry." Peel Brimley has attorneys who handle virtually every aspect of construction law including claim review and litigation, dispute avoidance, licensing, liens, defects, contract preparation and review, alternative dispute resolution (including mediation and arbitration), lobbying, and administrative law. The firm's team also consists of full-time paralegals and support staff who are well trained and dedicated to providing long-term success.

The Peel Brimley team prides itself in providing virtually every kind of legal construction service, from day to day job site advice to litigating hundred million dollar disputes on multi-billion dollar construction projects. Brimley says, "Our firm has represented virtually every type of client in the construction industry, including large owners, established general contractors, large groups of trade and subcontractors, architects, engineers, and suppliers - from the smallest mom and pop claims to many of Nevada's largest and most complex construction lawsuits."

The firm has a history of dealing with "huge dollar" claims and has taken a lead role in lawsuits for clients "with respect to almost every major construction litigation in Nevada, including multiple large complex construction litigations involving tens to hundreds of millions of dollars such as The Resort at Summerlin, The Venetian Hotel and Casino, The Aladdin Hotel and Casino, the City Center Project, and the Fontainebleau Las Vegas Project," Peel says.

The firm's specific background in construction law offers Peel Brimley's construction industry clients a significant advantage in the courtroom, as well as at the negotiating table, and is dedicated to resolving and preventing disputes on public and private projects in the most efficient manner possible. The firm prides itself on its comprehensive knowledge of substantive law, technical expertise, sophisticated technology capacity and in-depth experience in preparing, evaluating, negotiating and litigating construction claims. Peel Brimley advises clients with respect to facilitating

*"If you wanted somebody to represent you in a bankruptcy action, you wouldn't hire someone who knew nothing about the bankruptcy code. Likewise, the mechanics lien statutes, the prompt pay statutes for public works and the right to stop work statutes are unique and each has different requirements of owners, contractors and lower-tiered subcontractors and suppliers."*

proposals, negotiating and structuring complex transactions, and assisting clients with contract administration and project close-out for major commercial and government construction projects. The firm also offers its construction industry clients assistance with business and entity formation and planning, insurance coverage, employment law and labor law.

### **A Dedication to Excellence**

The firm's drive for excellence has led to client successes, both in and out of the courtroom. The Peel Brimley record in trial practice includes a wide range of construction-related claims, representing clients in geographically diverse state and federal trial and appellate courts, as well as various arbitration tribunals and dispute resolution boards. "One of the skill sets we have - one that is hard to find in the construction industry - is that of litigating; and we have successfully litigated many large constructions claims," says Brimley. That said, Brimley notes his current passion is helping owners and contractors avoid litigation by reviewing and seeking a resolution of claims at the early stages of construction before claims become colossal. Having won several multi-million dollar construction awards at trial, including a nine-month bench trial (31 trial days), Brimley is convinced that there is a better way. He cites as an example his role as lead counsel for the multi-year construction of the McCarran International Airport's \$2.4 billion Terminal Three expansion project (reportedly the largest public works project in Nevada), which was completed on time and well within budget. "Even though we cannot always avoid claims, I am convinced that a majority of disputes that arise during construction can and should be resolved during construction rather than years after the fact. Much also depends upon the team, and McCarran had a top-notch project team," says Brimley.

### **Leadership in the Development of Nevada Construction Law**

Peel Brimley has been a leader in the creation and development of Nevada law governing the construction industry. Peel says, "One of my greatest achievements was drafting and obtaining the passage of legislation that benefitted the construction industry. My father was a contractor, and I couldn't tolerate the injustices that were sometimes imposed upon him as a contractor. I knew from a very young age that I would someday play a role in defending contractors like him with respect to the various problems that I saw him experience."

There are three claim statutes that pertain to construction in





Nevada: the prompt pay statute for public works (NRS 339), the right to stop work statute (NRS 624) and the mechanics lien statute (NRS 108). Peel was successful in drafting and passing Nevada's current Prompt Pay Statute, Stop Work Statute and the two most recent revisions to Nevada's Mechanic's Lien Statute for the Nevada Subcontractor's Legislative Coalition and in coordination with several prominent industry organizations, including AGC, ABC, NCA, NSA. "We have drafted every construction claims statute that has passed in this state since 1999. The mechanics lien statute existed, but we amended it two different times. We authored the other two statutes. We have been instrumental in drafting other legislation pertaining to the construction industry," says Peel.

"Practical experience in such diverse areas is a key element in achieving success in negotiations and other legal matters," says Peel. "If you wanted somebody to represent you in a bankruptcy action, you wouldn't hire someone who knew nothing about the bankruptcy code. Likewise, the mechanics lien statutes, the prompt pay statutes for public works and the right to stop work statutes are unique and each has different requirements of owners, contractors and lower-tiered subcontractors and suppliers. You want to make sure your client is compliant with those statutes, otherwise, they could really stub their toe."

Peel Brimley recently participated in the 2013 legislative session and lobbied for changes to Assembly Bill 283, which includes legislation pertaining to the use of construction managers at risk ("CMAR") on public projects. Peel Brimley, representing Clark County, worked jointly with a large group of public agencies to create proposed revisions to Assembly Bill 283 reflecting an industry-wide consensus on appropriate modifications to the bill. Many of the revisions prepared by the firm were ultimately

accepted into the revised bill.

Brimley says, "You're beginning to see the public agencies use the CMAR process more frequently, which will change the way contractors bid some types of public projects. It also provides a model that can be used on private projects, allowing the contractor to come into the project early on, review the design and provide useful pre-construction services. It can help the owner save time and money when the project is ultimately built. Currently the CMAR process is used extensively outside of Nevada, but it is becoming more and more widely used inside Nevada." Under this construction delivery method, owners can save money by value engineering and incorporating contractor input in the design of a project. An ultimate goal of the CMAR delivery method is to build a project with fewer change orders and with fewer price increases.

Peel Brimley attorneys continue to play an important role in the creation and development of Nevada's construction laws, and the firm's clients benefit from this intimate working of knowledge of Nevada's rules and regulations, as well as developments in the construction industry throughout the country.

### **An Extensive and Expanding Client Base**

At the inception of Peel Brimley, the firm "represented primarily subcontractors, then we created a niche by representing multiple sub-contractors on very large, complex construction projects - some of the largest projects not only in Nevada, but in the United States at the time," Brimley says. After success in representing that type of client, the firm was approached by several general contractors and Peel and Brimley elected to expand the firm's practice to include general contractors. During that period, the firm's services included prosecution of construction lawsuits

against governing bodies, as well as the defense of lawsuits against subcontractors.

Brimley says, "In the process of representing general contractors against owners, we were engaged to handle some claims against the Clark County McCarran Airport. The county observed us handling those claims for general contractors and ultimately hired us to represent them." Since then, Peel Brimley has represented McCarran on over a dozen large contracts including the Terminal Three expansion project. On

million. The firm counseled the port throughout construction, helped to develop strategies and procedures to help resolve claims, and is helping prepare the port for subsequent litigation.

The firm was also recently selected following a national RFQ process as counsel for the construction of the Salt Lake City International Airport with respect to a ten-year, \$1.8 billion terminal redevelopment project. With Brimley serving as lead counsel on the project, Peel Brimley attorneys have assisted Salt Lake City with respect to the development of the project, assisted

# Peel Brimley ATTORNEYS AT LAW



Partners: Robert E. Werbicky    Eric B. Zimbelman    Richard L. Peel    Michael W. Brimley    Steven D. Meacham    Michael T. Gebhart

the Terminal Three project, the firm was charged with the task of helping Clark County avoid disputes and litigation, and all claims were fully resolved before the opening of the facility well within the dedicated contingency set up prior to construction. Peel Brimley is quick to acknowledge the diligent and effective project management role that Clark County and its people played completing the project on time and within budget. Clark County has also acknowledged the significant role of Peel Brimley in the success of the project.

Peel Brimley was also selected through a national request for qualifications (RFQ) process as construction counsel for the Port of Seattle and assisted the port with respect to the construction of a consolidated car rental facility at the Seattle-Tacoma International Airport, with a project cost of approximately \$225

in preparing the architectural contract and the program manager contract, and is currently engaged in drafting the CMAR contract for the project. Peel Brimley further expects to assist Salt Lake City with dispute resolution and other processes throughout the ten-year project.

### **Increasing Service In Spite of Economic Factors**

Due to the economic downturn, and particularly the decline in activity within the construction industry in recent years, all indicators point to a decrease of construction projects in the near future. Notwithstanding this discouraging economic outlook, Peel Brimley will continue to operate and even look for growth opportunities during the down cycles of the economy.

Peel says, "New types of projects will have to be thought up.

You're going to have to find new types of financing. For example, some lenders aren't loaning right now, so owners are looking at other financing methods, such as EB5 investors, foreign investors who are looking to fund projects in the United States. There is going to have to be a lot of creative financing to get our construction industry back on its feet."

Peel Brimley has been involved in meetings with the legal and construction industries in trying to determine what new challenges the future will bring. Peel Brimley is an active member of the Associated General Contractors, and has participated in multiple meetings with various subcontractor groups to prepare for these new challenges and opportunities. The firm continues to play an active role in the promotion of new construction and the development of laws to facilitate construction throughout Nevada.

As the firm's construction industry clients continue to expand to embrace new opportunities, Peel Brimley has also looked to expand its reach and client base. "We're finding ourselves working more frequently outside of Nevada because many of the construction projects now being built by our clients are located outside of the state. We've found a need to accommodate our clients by making ourselves more available to handle such projects," Brimley says.

### **A Belief in What They do**

Peel Brimley is committed to its clients, the construction industry, and to improving construction law. Brimley says, "Remember that every time you perform work, that person is going to make a decision whether to work with you in the future and whether to refer you in the future. We have made our living off of word-of-mouth referrals. We have not advertised heavily. People in the industry know us. They know we care about their needs. They know that we care about what they are concerned about - that we aggressively handle their lawsuits and that we are successful repeatedly in those lawsuits. Our philosophy is to do a great job for our clients so that they continue to return again and continue to refer us to people they work with in the industry."

Peel says that often many attorneys believe that their only job is to win the case, even in situations in which a client's position

is such that they simply can't win. "As an attorney you need to advise clients and try to assist them in making wise decisions through the course of litigation so they can avoid what could be a devastating result if they were to go forward with a bad case." Peel Brimley's goal is to help the client achieve the best result possible under the circumstances of a particular case. The client needs to understand what the risks and the alternatives are," Peel says.

Peel Brimley provides each client in the construction industry - whether an owner, general contractor, subcontractor or supplier with a frank, honest and open assessment, so the client can make an educated decision and proceed in his or her best interest.

Brimley summarizes the firm's guiding philosophy, "construction is something we believe in. We've worked very hard, especially in the state of Nevada, to try to create rights and remedies - available to contractors, sub-contractors and owners alike - that will provide them with the protections they need to run successful construction projects. We really believe in what we do."



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