Patrick J. O'Connor, Jr.

Employer: POConnor ADR LLC, Minneapolis MN

Profession: Attorney, Arbitrator/Mediator: Construction, Insurance, Government Contracts, Suretyship

Work History: Partner, Faegre Drinker Biddle & Reath LLP (f/k/a Faegre Baker Daniels LLP and Faegre & Benson LLP), 1990-2022; Partner, Hart Bruner & O'Brien LLP, 1983-1989; Associate, Briggs & Morgan, 1982-1983; Law Clerk to Judge Miles Lord, U.S. District Court (D. Minn.), 1981-1982

Litigation Experience: 40 years practicing construction law representing owners, contractors, subcontractors, sureties, suppliers, architects & engineers on matters ranging from a few million (M) to several billion (B) dollars, including: Represented tunneling subcontractor against prime and city over delays and extra costs due to differing site conditions under railroad switching yard; defended owner against claims seeking injunctive relief brought by city based upon alleged code violations pertaining to concrete construction; represented contractor and surety seeking compensation of over $100M and additional relief under cardinal change theory on several super fund remediation projects; represented contractor against Corps of Engineers seeking constructive change of approximately $10M on lock & dam project on Mississippi; represented design consortium regarding disputes arising out of cost overruns of $1B on Colo. VA hospital; represented pre-cast concrete supplier against property damage and delay claims arising from collapse of a Miami college's parking structure; handled contractor's appeal of subcontractor's change order dispute based in part upon proper interpretation and application of variation in estimated quantities provision on highway project in Minn.; handled contractor's appeal involving scope of work and defective construction claims arising out of renovation of historic theatre in Minn.; represented contractor and surety in Tenn. federal court against claims by retailer in excess of $50M involving delays and defective work on fifteen projects throughout southeastern U.S.; represented owner over delay and quality of work issues arising from partial collapse during renovations of historic creamery in Milwaukee; represented contractor in connection with scope of work, acceleration, and use of contingency disputes arising from construction of a Midwest professional sports stadium; represented design-builder over scope of work and performance requirements of steam-generating system in university's historic powerplant; represented owner in connection with differing site conditions and delay claims arising from renovation of a Milwaukee brewery into housing; represented surety over $30M completion of work costs sought by Nebraska municipalities on highway and bridge projects; represented owner on claims of delayed construction as well as concrete and curtain wall issues on high-rise residential tower in Indianapolis; represented surety against 2 oil suppliers alleging bad-faith handling of payment bond claims on N.D. road projects; represented owner over scope of work and change order disputes on a

25,000-s.f residence in Minn.; represented design-builder in connection with water infiltration issues involving luxury home in Minn.; represented surety and roofing contractor against disruption and water infiltration claims involving standing-seam steel roof on steel plant in Indiana; represented developer in connection with water infiltration, quality of mechanical systems and delay claims of nearly $100M arising out of construction of condominium in Miami; represented contractor on claims by Ariz. Native American corporation arising out of $7M damages to school due to expansive soils; represented road builder in dispute with oil supplier regarding terms of requirements contract; represented design-builder and surety in connection with differing site conditions and defective specifications claims arising out of center pivot irrigation system in S.D.; represented architect in connection with claims arising from collapse of façade on historic structure under renovation in Minn.; advised contractor in connection with collapse of wind turbine.

Transaction Experience: Insurance, warranty, and risk management advice for a fenestration supplier; due diligence undertakings with respect to stock and asset by-sell transactions of purchase of curtainwall and fenestration entities; advice with respect to project delivery approaches for capital improvements of a major Midwest medical provider; project delivery, including integrated project delivery approach, advice to two east coast educational institutions.

Expert Witness Experience: Engaged as an expert witness on a number of matters, including: Retained as an expert witness in an arbitration between Owner and Construction Manager relating to the intent and meaning of certain form AIA provisions as they relate to a dispute regarding termination recoveries; retained by engineering firm to provide testimony regarding the reasonableness of a settlement involving cumulative impact claims on a large infrastructure project in the Western U.S.; retained by design-builder to provide testimony in an adversary proceeding involving an EPC agreement for a cogeneration facility addressing issues of industry practices involving lien waivers and letters of credit; engaged by a developer to testify regarding a surety's bond obligations arising from termination of its principal; retained by an insurer to provide testimony regarding adequacy of professional legal services in connection with a dispute over a wastewater facility in the Southwestern U.S.; retained by a city in Northeastern U.S. to act as an expert concerning the termination of a design-builder on a sports facility; retained by a curtainwall installer to opine on insurance coverage issues arising out of alleged defective work on a hospital project; retained by contractor on termination dispute involving residential high-rise project in California; retained by contractor in connection with waiver of subrogation and business interruption issues arising from a hotel project in Florida; retained by hotel developer in South Carolina in connection with an action involving standard of care issues of a construction manager under a guaranteed maximum price AIA contract document; responded to inquiries posed by panel hearing dispute over improvements associated with Panama Canal regarding differences between design-build and design-bid-build contracts, value

engineering and cardinal change under FAR; retained by Hawai'i Department of Transportation in connection with certain construction at the Honolulu airport giving rise to disputes over surety's obligation to perform pursuant to manuscript performance bond; retained by arbitration panel to providing opinions regarding differences between design-build and design-bid-build contracts, value engineering, and cardinal change under the Federal Acquisition Regulations in connection with a dispute involving improvements related to the Panama Canal; retained by County of Hawai'i in connection with a dispute with a surety over whether County was required to complete certain improvements as a condition of recovering under performance bonds; retained by California municipality over dispute with a surety regarding the appropriateness of surety's use of principal's employees to satisfy its bond obligations; retained by contractor in connection with a Texas hospital project giving rise to additional insured coverage issues; retained by developer in a dispute with Hawai'ian homeowner over whether developer acted reasonably in declaring default under a number of development agreements and making a formal demand upon surety; retained by German manufacturer in connection with a South American arbitration seeking opinion as to whether consortium agreement barred recovery of lost profits; retained by contractor on a municipal project in Minnesota regarding dispute on whether party repudiating bid was liable for more than the penal sum of the bid bond; retained by owner to address certain property insurance recovery issues in connection with a hotel project in Nevada; retained by contractor in connection with a project for a California university giving rise to questions as to the reasonableness of amounts paid in settlement and release for purposes of insurance coverage; retained by surety in connection with a dispute against liability insurer regarding coverage for defective masonry construction on a project in Kansas

Alternative Dispute Resolution Experience:

Co-author of nine-volume construction law treatise containing one chapter consisting of approximately 1,500 pages on arbitration published by Thomson-Reuters. As advisor to American Institute of Architects Contract Documents Committee, provide guidance on, among other matters, ADR questions and issues. Acted as counsel, neutral, and expert in numerous construction-related arbitrations, ranging from $1M to more than $300M in claim amounts, including: represented engineer in arbitration with owner over design and performance of pumping stations on pipeline running between Canada and U.S.; represented prime contractor in arbitration with rural water utility over contract compliance and differing site conditions related to potable water system in Iowa; represented owner in arbitration involving delay and disruption claims arising out of design and construction of luxury residence in Minn.; represented developer against contractor in arbitration involving property damage, delay, and disruption claims arising out of conversion of old flour mill into luxury residences; represented a Minnesota museum in arbitration against architect over aesthetic and other performance issues involving outdoor arbor; represented contractor in arbitration with subcontractor over change orders and scope of work disputes on lock & dam project in central U.S.; represented theme park owner in

appraisal proceeding over property losses due to Hurricane Katrina; represented utility in arbitration over delay and disruption claims arising in connection with solar project in Minn.; represented EPC contractor in an action to compel arbitration of a dispute over performance guarantees regarding natural gas facility in Cal.; retained in connection with South American arbitration to provide opinions as to whether consortium agreement allowed recovery of lost profits under U.S. law; provided counsel to U.S. window manufacturer regarding insurance, warranty and risk management matters including analysis and drafting of arbitration provisions. Served on 3-member arbitration panel involving disputes regarding curtainwall issues on project in central U.S.; served on 3-member panel involving quality of work and delay disputes between contractor and owner of retreat center in Minn.; served as sole arbitrator of luxury home project involving quality of work disputes; served as chair on party-appointed panel in arbitration between design-builder and owner of 2 luxury apartment complexes over allegations of faulty construction and poor design. Participated in numerous construction-related mediations in various capacities, including neutral, party representative, and expert.

Education: B.A., Hamline University, 1975; J.D., American University, Washington College of Law, 1981

Professional Licenses: Admitted to the Bar: Minnesota, 1981; U.S. District Court (D. Minn), 1982; U.S. Court of Appeals (8th Circuit); and U.S. Supreme Court

Professional Associations: American College of Construction Lawyers (ACCL) (Fellow and Past-President); American Institute of Architects (Advisor to Contract Documents Committee); American Bar Association's (ABA) Fidelity & Surety Law Committee (Past Vice-Chair); ABA Forum on the Construction Industry (ABA Forum) (Past Chair, Bonds, Liens & Insurance Section and past Editor of *Under Construction* newsletter); BIM Forum (former co-chair, Legal Committee)

Publications & Speaking Engagements: Co-author, *Bruner & O'Connor on Construction Law* (Thomson-Reuters 2002-2026); Restatement (Third) of the Law of Suretyship & Guaranty (Advisor, American Law Institute); Practising Law Institute's "Building Better Construction Contracts" (co-chair, New York 2011-2019); University of Minnesota School of Architecture (lecturer on rights and responsibilities of design professionals, 2010-2019); "Design Delegation & Design Assist: The Good, the Bad, and the Ugly" (ACCL Annual Meeting, Bonita Springs 2023); "Seeing the Big Picture: Construction Management Under the 2019 AIA CM Contracts – Part 2: Construction" (ABA Forum, Seattle 2021); "Mock Appellate Argument: Insurance Coverage for Property Loss Due to COVID" (ACCL Annual Meeting 2021); "Seeing the Big Picture: Best Practices for Contracting and Construction Risk Management for 2021" (Construction Management Association of America, April 2021); "The Most Important Changes in the 2019 AIA Construction Management Documents" (ABA Forum, June 2020); "AIA 2019 Documents: Understanding the Changing Role of the Construction Manager" (AIA Minnesota Convention,

Minneapolis 2019); "Transferring the Risk: Working With the New Insurance and Bonds Exhibit" (ABA Forum, Boston 2017); "Most Important Changes to the AIA Construction Documents" (Minnesota Real Estate Institute, St. Paul 2017); "The American Institute of Architects' New Approach to Insurance: The 2017 Insurance Exhibit" (*Journal of the American College of Construction Lawyers* (JACCL) 2017); "Cyber Security and Cyber Insurance for the Design and Construction Industry" (55th Annual Meeting of Invited Attorneys, Miami 2016); "Recent Developments in Building Information Modeling" (AIA National Convention, Philadelphia 2016); "Cyber Security and Cyber Insurance for the Design and Construction Industry" (JACCL 2016) ; "Duties Owed by Design Professionals: Standard of Care and Other Mysteries" (JACCL 2015); "High Court Arbitration Law: An Edifice of Its Own Making" (JACCL 2015); "Design Professional Standard of Care" (ACCL/Society of Construction Law (SCL), Kuala Lampur 2014); "How to Draft a Construction Contract Insurance Provision" (JACCL 2014); "Recent Developments in Insurance Law" (JACCL 2013); "Navigating the Legal Aspects of Building Information Modeling" (The Harvard Club, New York City, 2012); "Legal Considerations in Sustainable Design and Construction" (JACCL 2011); "2009 Insurance Law Survey" (JACCL 2010); "Bankruptcy and the Completing Surety" (JACCL 2010); "Integrated Project Delivery Part I: Collaboration Through New Contract Forms" (JACCL 2009); "Business Interruption Coverages" (JACCL 2009); "Understanding General Liability Coverage: A Primer for Construction Lawyers" (JACCL 2008); "Building Information Modeling and Integrated Project Delivery" (SCL, London 2008); "The Curiouser and Curiouser State of American Arbitration Law: Running Twice as Fast Only to Fall Behind" (JACCL 2007); "Productivity and Innovation in the Construction Industry: The Case for Building Information Modeling" (JACCL 2007); "Recent Issues in Property Coverage," Wm. Mitchell L.R. 34, 177 (2007); "The American Experience with Exterior Insulation and Finish Systems (EIFS) for Synthetic Stucco Cladding Systems" (Int'l Constr. L.R. 2006); "Allocating Risks of Terrorism and Pandemic Pestilence: Force Majeure for an Unfriendly World," ABA *Construction Lawyer* (2003)