



**KIRSTEN A. WORLEY**

HFM partner Kirsten Worley provides a full range of litigation and counseling services to the real estate and construction industry. Ms. Worley handles front-end contract drafting and negotiation and general counseling, as well as disputes and litigation.

Ms. Worley prides herself on problem-solving for her clients and typically looks for the best, most cost-effective solution that meets the client's needs, whether that is a legal solution or a practical business solution. She strives to bring transparency and value to clients across the board, and is a trusted advisor to her clients, many of whom have been clients for over a decade. Ms. Worley has been recognized as a Super Lawyer® in the San Diego region in 2020, 2021 and 2022. Additionally, she was honored by San Diego Business Journal as a Leader in the Law in 2022, a “Women of Influence in Construction” in 2023, and a “Women of Influence in Law” in 2023.

**PRACTICE GROUPS**

- ▶ Bankruptcy, Insolvency & Reorganization
- ▶ Business Litigation
- ▶ Construction
- ▶ Real Estate

**EDUCATION**

- ▶ J.D., University of California at Berkeley School of Law (2002)
- ▶ B.A., University of California at Los Angeles (1999) *Summa Cum Laude*

**ADMITTED TO PRACTICE**

- ▶ Supreme Court of California
- ▶ Ninth Circuit Court of Appeals
- ▶ United States District Courts for the Northern, Southern, Eastern and Central District of California
- ▶ United States Bankruptcy Courts for the Northern, Southern, Eastern and Central District of California

Ms. Worley represents clients in various settings, including litigation (state and federal), mediation, arbitration, and informal settings including counseling during contract performance. She recognizes that often, the best solution is to help clients avoid court if at all possible, but if court is unavoidable, she looks for the shortest path to the most successful resolution. Ms. Worley represents owners, general contractors, subcontractors, suppliers, developers, lenders, sureties, private equity capital investors, and businesses of all sizes from large corporations to local small businesses, and business owners with everything from large-scale breach of contract litigation to mechanics’ liens, stop notices and bond claims. She is equally comfortable with large firm, institutional-sized litigation with hundreds of thousands of complex discovery documents as well as small vendor disputes.

Because of the depth of Ms. Worley’s background in contract enforcement and disputes, she is also the ideal attorney to assist clients to navigate the front-end negotiation of new contracts. Ms. Worley handles transactional matters such as purchase and sale agreements for real estate and business purchases, easements, tenant matters, construction contract drafting, construction licensing, and corporate formation and governance matters. Ms. Worley regularly serves as outside general counsel for select clients, to assist with routine and special corporate compliance needs, as well as contract matters.

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Ms. Worley's practice further includes creditors' rights and commercial law issues related to the real estate and construction industry. The rights of those industry participants are often different from other creditors' rights. This includes judgment and debt collections, as well as creditors' rights in insolvency and bankruptcy matters. Ms. Worley represents parties in claim objections and adversary proceedings, receiverships, collections actions, litigating lien priority issues, transactional matters, and negotiated solutions, restructuring and workouts where she works to minimize the impact of insolvency.

Ms. Worley's experience is nationally recognized, as she has presented on the bankruptcy-related topics at national surety conventions, and she has co-authored a chapter of the American Bar Association's Bond Default manual (4<sup>th</sup> Edition, May 2015, published by the Fidelity and Surety Committee of the Tort and Trial Insurance Practice Section of the American Bar Association).

The following are some of the representative matters Ms. Worley has handled for clients:

- **Construction Claims:**

- Represented material supplier defeat general contractor's claim relating to \$1 million in construction defects claims;
- Represented steel subcontractor recover over \$20 million in excess completion costs as a result of substantial design changes on a public works project;
- Represented subcontractor terminate relationship with supplier and defeat \$2 million termination damages claims;
- Represented general contractor recover excess completion costs from owner of hospitality project;
- Represented owner of hospitality project recover costs against general contractor for defective and non-conforming work and defeat general contractor's mechanics' lien;
- Represented multiple subcontractors terminate their bids due to price escalation caused by delays caused by Covid-19.

- **Transactional Matters:**

- Represent local family office in purchase and sale of over \$250 million in commercial real estate assets, and handle all related title, easement, and lending issues, as well as the creation and structuring of single purpose asset entities and corporate governance issues;
- Represented shareholder buy out other shareholders of pharmacy;
- Represented construction services company terminate relationship with shareholder who had misappropriated funds, resulting in negotiated \$1 million payout to client without litigation;

- Represented contractor sell construction company to large national contractor, and successfully negotiated all remaining liabilities including with respect to the leases, surety bonds, and line of credit.
- **Surety & Lending Collections:**
  - Represented surety resolve bond and indemnity claims, resulting in 100% recovery against indemnitors;
  - Represented lender pursue collections against multiple guarantors, resulting in 100% recovery.
- **Bankruptcy Matters:**
  - Represented engineering company defeat claim by liquidating trustee for preference avoidance in bankruptcy;
  - Represented large national contractor defeat adversary claim for turnover of retention to subcontractor in bankruptcy based upon incomplete and non-conforming work performed by subcontractor/debtor;
  - Achieved full payment to subcontractor creditor from bankruptcy by successfully asserting priority of mechanics' lien over the construction lender's trust deed.

Ms. Worley has obtained significant victories for her clients, some of which have even resulted in case opinions making new law, including the following notable decisions:

- *Archer Western Contractors, LLC v. International Fidelity Insurance Company*, 2017 WL 4286970 (U.S.D.C., S.D. Cal., September 27, 2017)
- *Archer Western Contractors, LLC v. International Fidelity Insurance Company*, 2017 WL 882401 (U.S.D.C., S.D. Cal., March 6, 2017)
- *Travelers Cas. & Sur. Co. of Amer. v. Amoroso*, 2004 WL 1918890 (U.S.D.C., N.D. Cal., August 24, 2004)

Ms. Worley spoke about construction claims caused by Covid-19 at the ALFA International Construction Law Conference in July 2022 at The Ritz Carlton Bacara in Santa Barbara, California, and authored a white paper about the topic which provides a comprehensive discussion of the status of court rulings related to Covid-19 through summer of 2022. ([Here is a link to download the white paper.](#))

To aid clients in meeting critical deadlines on public works and private works projects, Ms. Worley developed a proprietary tool, the "Timeline of Construction Remedies Under California Law." (A link to download this Timeline appears below.)

When not practicing law, Ms. Worley (who is licensed to captain up to a 51 foot sailboat) enjoys sailing with family, including her two teenage sons, and friends on San Diego's beautiful bay.

## PUBLISHED WORKS

- ▶ **"What's Worse, Covid-10 or its Aftermath? Force Majeure and Disputes Pre- and Post-Covid,"** ALFA International, Construction Law Conference, The Ritz-Carlton Bacara, Santa Barbara, California, July 2022 (Author and Co-Presenter). A copy of the white paper, which includes a comprehensive look at the court's treatment of Covid-19 issues as of summer 2022 may be located here:  
[https://www.alfainternational.com/publications\\_news/whats-worse-covid-19-or-its-aftermath/](https://www.alfainternational.com/publications_news/whats-worse-covid-19-or-its-aftermath/)
- ▶ **Bankruptcy Chapter of THE BOND DEFAULT MANUAL**, 4th Edition (May 2015), published by the Fidelity and Surety Law Committee of the Tort and Trial Insurance Practice Section of the American Bar Association (Co-Author)
- ▶ **"Analysis of Rights to Job Materials In The Event of Non-Payment or Insolvency - Buyer in Ordinary Course Status and Purchase Money Security Interests,"** *Thompson Reuters-West, Construction Briefings*, No. 2014-5 (May 2014) (Author)
- ▶ **"Letters of Credit and Bankruptcy Revisited: A Discussion of the Fourth Circuit's Ruling in *In re ESA Environmental Specialists, Inc.*,"** *Surety Claims Institute Newsletter*, Volume 26, No. 1 (January 2014) (Author)
- ▶ **"Construction Projects Funded With Future Money? Why Construction Law May Become a Finance Practice,"** *Thompson Reuters-West, Construction Briefings*, No. 2013-9 (September 2013) (Author)
- ▶ **"Chapter 9 Bankruptcy: Public Works Wasteland or Business As Usual?,"** feature article published in the *Fidelity & Surety Law Committee Newsletter of the American Bar Association*, Tort Trial & Insurance Practice Section, Winter Edition 2013 (Author)
- ▶ **"The Contractor's Dilemma in an Owner Bankruptcy,"** *Thompson Reuters-West, Construction Briefings*, No. 2011-9 (September 2011) (Author)
- ▶ **"Contract Setoff and Recoupment in Subcontractor Bankruptcies,"** *Thompson Reuters-West, Construction Briefings*, No. 2010-12 (December 2010) (Author)
- ▶ **"Recovery of the Surety's Costs Following Wrongful Termination,"** *The Construction Lawyer*, Spring Edition 2010 (Author)

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PRESENTATIONS

- ▶ ***"What's Worse, Covid-10 or its Aftermath? Force Majeure and Disputes Pre- and Post-Covid,"*** ALFA International, Construction Law Conference, The Ritz-Carlton Bacara, Santa Barbara, California, July 2022 (Moderator and Co-Presenter)
- ▶ ***"When Up Is Down: Contractor Bankruptcy & Insolvency,"*** *Orange County Bankruptcy Forum*, Costa Mesa, California, August 2013 (Co-Presenter)
- ▶ ***"The Obligee May Be Broke, But You Can't Sell City Hall: Chapter 9 Municipal Bankruptcy,"*** *Pearlman Association*, Woodinville, Washington, September 2012 (Co-Presenter)

AWARDS & HONORS

- ▶ San Diego Business Journal "Women of Influence in Law" (2023)
- ▶ San Diego Business Journal "Women of Influence in Construction" (2023)
- ▶ San Diego Business Journal "Leaders in Law" honoree (2022)
- ▶ San Diego Super Lawyers® (2020-2023)
- ▶ San Diego Business Journal "Leaders in Law" finalist (2021)
- ▶ University of California at Berkeley School of Law
  - McBaine Honors Moot Court Competition
  - Berkeley Technology Law Journal Board, 2001-2002
  - Boalt Hall Certificate in Law & Technology
  - High Honors Awarded (Classes): Corporations; Remedies
  - Honors Awarded (Classes): Civil Procedure; Evidence; Depositions Practicum; Estates & Trusts
- ▶ University of California at Los Angeles
  - *Summa Cum Laude*
  - *Phi Beta Kappa*
  - Department Honors, English

AFFILIATIONS

- ▶ State Bar of California
- ▶ California Lawyers Association (CLA), Member, Real Property Law Section
- ▶ San Diego County Bar Association, Member, Construction Law Section
- ▶ Lawyers' Club, San Diego
- ▶ American Bar Association, Construction Law Forum
- ▶ American Bar Association, Tort Trial and Insurance Practice Section
- ▶ UCLA Real Estate Alumni Group (Executive Board Member)