



## Keith J. Bergeron

Partner

504.593.0789

kbergeron@deutschkerrigan.com

### Practices

Construction Law & Litigation

Design Professional Errors & Omissions

### Industries

Construction

### Bar Admissions

Louisiana

### Education

J.D., Loyola University of New Orleans, 1998, *Law Review* (1995-1998)

B.S., University of New Orleans (Mechanical Engineering), 1991

As a degreed engineer, Keith J. Bergeron realizes that it gives his clients a sense of security to know they share similar backgrounds and that he understands their type of work.

Receiving a lawsuit brought against you brings the stigma that something went wrong, but sometimes that is not a true statement. Keith investigates claims and defends his clients in all aspects of construction and construction surety law. He devotes special attention to architectural and engineering defense, licensing, and contractual claims.

Keith earned his undergraduate degree in engineering from the University of New Orleans. After graduation, he worked at Chevron for about 10 years as a mechanical engineer in its pipeline company, responsible for delivering crude oil and natural gas to refineries onshore.

He is a regular speaker at the University of New Orleans' engineering school and is active with the American Bar Association's Forum on the Construction Industry, where he served on the steering committee for Division 10 (Transportation, Environment and Legislation), currently serves on its Governing Committee and chairs its Technology Committee.

### Professional Associations

- Registered Louisiana Engineering Intern
- American Bar Association
  - Forum on Construction Law, Technology Committee Chair, 2019-present
  - Forum on Construction Law, Governing Committee, 2018-2020
  - Forum on Construction Law, Steering Committee, Division 10 Chair, 2011-2013
- Louisiana State Bar Association
  - Fidelity, Surety and Construction Law Section
- Project Management Institute
  - Board of Directors, Greater New Orleans Chapter, 2002
  - Vice President, Programs, 2001
  - Vice President, Special Projects, 2000
- Toastmasters Club of Young Leadership Council
  - President, 2002-2005

### Accolades

- *Chambers & Partners*, "Notable Practitioner," 2013-2018

- Louisiana SuperLawyers, 2013-2019
- The Best Lawyers in America® List, 2016-present
- New Orleans Magazine's "Top Lawyers" list, 2015, 2018
- Martindale-Hubbell™ AV Preeminent® Peer Review Rated Lawyer

### Representative Successes

- **Payment Disputes – Contractor and Subcontractor**

Represented a general contractor in a contract dispute with a earthwork subcontractor. The subcontractor filed for arbitration in accordance with the contract provisions and filed a lien that was not reflective of the amount in dispute. The same contract contained a provision allowing the prevailing party to recover its attorney's fees and other costs associated with the arbitration. Given the amount in dispute, the arbitration was heard as a fast tract proceeding with one day of testimony. The dispute centered around whether or not the earthwork subcontractor could recover its costs to repair a water line and other underground utilities encountered in the work area that were shown on the plans and marked by the Louisiana One Call office. The general contractor refused to pay for the costs to repair the utilities damaged by the subcontractor. Additionally, the general contractor refused to release disputed money to the subcontractor when the suppliers and other sub-subcontractors working for the earthwork subcontractor complained of the lack of payment and refused to execute lien waivers in order to receive the payments. The subcontractor alleged prompt payment statutory violations given these withheld payments. After hearing the testimony of four witnesses (two per side), the arbitrator issued an award dismissing all of the subcontractor's claims. The arbitrator specifically found that the subcontractor failed to protect the underground utilities even though they were shown on the plans and marked in the field. The arbitrator further found that the general contractor was the prevailing party awarding it the recovery of attorney's fees, the arbitration filing expenses, the arbitrator's fee and the premium paid to bond off the lien.

- **Appellate - Waiver of Subrogation**

Successfully briefed and argued this case before the First Circuit Court of Appeals, State of Louisiana. The court affirmed the granting of summary judgment on the issue of the waiver of subrogation clause contained in the client's AIA contract to perform professional architectural services for the design and construction of an office building in the Parish of St. Tammany, State of Louisiana.

*The Gray Insurance Company vs. Old Tyme Builders, et al.*, 2003-CA-1136 (April 2, 2004)

- **Engineer Liability – Wong-Choy v. Jefferson Parish, et al**

A property owner adjacent to a drainage canal filed suit for damages caused by canal improvements designed by Mr. Bergeron's client, an engineering company. Judge trial concluded in August 2003.

*Wong-Choy vs. Jefferson Parish, et al*, Case Number 512-964, Parish of Jefferson, State of Louisiana.

- **Engineer Liability - Moore, et al. vs. Board of Commissioners for Orleans Parish Levee District, et al**

A driver injured in single car accident on a bridge filed suit for damages caused by unreasonable dangerous conditions on bridge, including slippery metal grating and unprotected light supports. At trial, plaintiffs argued that the client engineering company failed to warn the bridge owner about dangerous conditions not in compliance with then-current roadway design standards. Mr. Bergeron defeated a multi-million dollar award by persuading jurors to assign 90% of the fault to a previously settled party.

### Presentations

- "Email Etiquette and Social Media Tips," AIA New Orleans CEU program, July 2018
- "Ethical Dilemmas for Construction Attorneys: Where the Ethical Choice and Legal

Standards Diverge,” ABA Forum on Construction Law Annual Meeting 2018, New Orleans, LA

- “How to Represent Design Professionals in Front of Professional Licensing Boards,” ABA Forum on the Construction Industry Annual Meeting 2015, Boca Raton, FL
- “Handling Ethical Issues in a Professional Engineering Practice,” HalfMoon Education Inc., Engineering Law and Ethics Seminar, New Orleans, LA, 2015
- “Construction Insurance: CGL, Builder’s Risk,” LSU CLE Program on Construction Law, Baton Rouge, LA, 2013
- “The Role of Design Professionals on Each Delivery System,” American Bar Association Forum on the Construction Industry Annual Meeting, 2012
- “How to Document Your Project Files: the Good, the Bad and the Ugly,” CLE Presentation, The Louisiana Chapter of the Association of Corporate Counsel, New Orleans, LA, 2012
- “Point/Counterpoint on Key Provisions of B101: The Hot Button Issues and How They Have Changed,” ABA Forum on the Construction Industry Mid-Winter Meetings 2008 New York and San Antonio
- “Project Critical Path Scheduling 101,” ABA Forum on the Construction Industry Annual Meeting 2003 Boston, MA

### **Publications**

- “Louisiana” *State-By-State Guide to Design and Construction Contracts and Claims*, chapter authors, Keith Bergeron, Terry Brennan, Kelly Theard, Aspen Publishers, 2008
- “Point/Counterpoint on Key Provisions of B101 (Standard Form of Agreement Between Owner and Architect): The Hot Button Issues and How They Have Changed,” Co-authored by Mr. Bergeron; *The Construction Lawyer*, Vol. 28, Spring 2008.
- “AIA Document Changes for 2007,” *The Legal Blueprint*, June 2007
- “Nothing is Insignificant or Waivable,” *The Legal Blueprint*, March 2007