

# David J. Theising



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## PRIMARY PRACTICE

Trial and Appellate Litigation in State and Federal Courts, Complex Civil Litigation, Class Actions, Business and Commercial Law, Antitrust and Unfair Trade Practices, Business Torts, Real Estate, Construction Law, Public Contract Law, Fidelity and Surety Law, Insurance Law, Bankruptcy and Receivership Law, Debtor and Creditor Law.

## EXPERIENCE

Mr. Theising has represented and advised both large publicly-held corporations and small private business clients in a wide range of legal matters. He has over 35 years of trial and appellate litigation experience, with first chair responsibility handling mediations and arbitrations, and court trials and jury trials in state and federal courts throughout the country, and appeals to state and federal appellate courts, including the Indiana Supreme Court and the United States Supreme Court. Mr. Theising has provided counsel, transactional services, and legal representation in litigation for clients in manufacturing and technology, food production, processing, and distribution, and the banking and financial services industry, as well as municipalities, governmental bodies, and state and local government boards. He has also represented clients from all segments of the real estate and construction industry, including public and private owners and developers, lenders, architects, engineers, design-builders, general contractors and construction managers, specialty and trade contractors and subcontractors, material suppliers and equipment lessors, and each of their respective insurers and sureties, in matters such as contract drafting and negotiation, public procurement laws and bid protests, design issues, differing site conditions, changes and equitable adjustments, delays, acceleration, disruptions, and other impact and inefficiency claims, construction defects and nonconforming work, suspensions and terminations, takeover, financing, and closeout agreements, warranty, indemnification, and subrogation claims, and lien, bond, and insurance claims and coverage disputes. Mr. Theising has broad experience with commercial construction projects, such as office buildings, hospitals and medical facilities, shopping malls and retail stores, and hotels and restaurants, as well as industrial and utility construction projects, such as power generation plants, mining and drilling operations, factories, steel mills, automotive and aircraft manufacturing plants, pharmaceutical laboratories and production facilities, and warehouse and distribution facilities. He also has extensive experience with public construction projects, such as universities and schools, courthouses, police and fire stations, libraries, municipal recreation facilities, stadiums and arenas, water and wastewater treatment plants, and military bases, munitions depots, and other secure government facilities, as well as civil infrastructure projects such as water, sewer and gas distribution systems, roads and highways, bridges, airports, rail stations, and transportation hubs. Mr. Theising currently serves as an elected member of the Governing Committee of the American Bar Association Forum on Construction Law, and proudly chairs that organization's Diversity Committee. He is a founding member, Executive Council member, and past Chair of the Construction & Surety Law Section of the Indiana State Bar Association, and is also a past Chair and Steering Committee member of the Division on Insurance, Surety & Liens of the ABA Forum on Construction Law. He has served over 15 years on the National Panel of Commercial and Construction Arbitrators for the American Arbitration Association. Mr. Theising has also served on the U. S. Panel of Bankruptcy Trustees for the Southern District of Indiana for over 20 years, and has acted as a trustee or receiver in thousands of bankruptcy and receivership proceedings. He has

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also acted as counsel to business debtors, secured and unsecured creditors, official creditors' committees, and trustees in chapter 7 bankruptcy liquidations and chapter 11 bankruptcy reorganizations.

## **EDUCATION**

A.B., Indiana University College of Arts and Sciences, 1976; J.D., Indiana University Maurer School of Law, 1980. Honors Teaching Fellow, Indiana University Department of Economics, 1974-76; Law Fellow, Indiana University Maurer School of Law, 1977-80. Member, Indiana Law Journal, 1978-79.

## **BAR ADMISSIONS**

Indiana, 1980; Pennsylvania, 1996; North Carolina, 1996; District of Columbia, 1996; Maryland, 1997; Virginia, 1997; Texas, 1997; Colorado, 1997. Also admitted to practice before the United States Supreme Court, the United States Courts of Appeal for the Third, Fourth, Fifth, Seventh, Tenth, District of Columbia, and Federal Circuits, the United States Court of Federal Claims, the United States Tax Court, and the United States District Courts for the Northern and Southern Districts of Indiana, Northern District of Illinois (Trial Bar), Western District of Pennsylvania, District of Maryland, Eastern and Western Districts of Virginia, Eastern, Middle and Western Districts of North Carolina, District of Colorado, and the District of Columbia District.

## **MEMBER**

Indianapolis Bar Association, Hamilton County Bar Association, Indiana State Bar Association (Litigation Section; Construction & Surety Law Section; Probate, Trust & Real Property Section; Bankruptcy & Creditors' Rights Section), Maryland State Bar Association, Pennsylvania Bar Association, Colorado Bar Association, State Bar of Texas, North Carolina State Bar, Virginia State Bar, the District of Columbia Bar, American Bar Association (Antitrust Law Section, Committee on Civil Practice & Procedure, Committee on Competition Torts, and Committee on Trial Practice; Litigation Section, Committee on Commercial & Business Litigation, Committee on Business Torts & Unfair Competition Litigation, Committee on Construction Litigation, and Committee on Bankruptcy & Insolvency Litigation; Public Contract Law Section, Construction Division, Committee on Construction Claims & Disputes, and Committee on Bonding & Insurance; Tort Trial and Insurance Practice Section, Committee on Business Litigation, Committee on Fidelity & Surety Law, and Committee on Title Insurance Litigation; Forum on Construction Law, Division on Insurance, Surety & Liens, Division on Specialty Trade Contractors & Suppliers, and Division on Government Construction), International Bar Association, Defense Trial Counsel of Indiana, Commercial Law League of America.

## **BAR ACTIVITIES**

Indiana State Bar Association House of Delegates, Indiana State Bar Association Committee on the Federal Judiciary; Indiana Supreme Court Committee on Character & Fitness; Indianapolis Bar Association Grievance Committee (1991-96); Life Fellow, American Bar Foundation; Life Fellow, Indiana Bar Foundation; Distinguished Fellow, Indianapolis Bar Foundation.

## **PUBLICATIONS**

Editor, MECHANICS LIENS, Indiana Continuing Legal Education Forum, 1985; Author and Lecturer: "Mechanics Liens and Mortgage Foreclosures," Indiana Continuing Legal Education Forum, 1987; "Rights and Remedies of a Creditor in Bankruptcy Proceedings," Lorman Education Services, 1991, 1993; "Eleventh Amendment Immunity to Schools: Individual and School Board Liability under Section 1983," Indiana School Boards Association, 1994; "Mechanics Liens and Related Claims," Indiana Continuing Legal Education Forum, 1994; "Dismissal of Chapter 7

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Bankruptcy Proceedings for Substantial Abuse under Section 707(b)," Indiana Continuing Legal Education Forum, 1995; "Mechanics Lien Law and Strategies," National Business Institute, 1996, 2000, 2001, 2002, 2003, 2004, 2005, 2006; "Construction Law: Creative Strategies for Project Completion and Litigation Avoidance," Lorman Education Services, 1998; "Emerging Trends and Issues in Construction Law," Professional Education Systems, 1998; "Purchasing and Procurement Law in Indiana," Lorman Education Services, 2000; "Bankruptcy: A Creditor's Perspective," Lorman Education Services, 2000; "The Annual Bankruptcy Institute," Indiana Continuing Legal Education Forum, 2000; "Construction Contracting and Lien Enforcement in Indiana," National Business Institute, 2006, 2007; "The Fundamentals of Construction Contracts in Indiana: Understanding the Issues," Lorman Education Services, 2006, 2007; "Managing Complex Construction Law Issues," National Business Institute, 2007; "The Arbitration Forum," Indiana State Bar Association, 2008; "The State of Privileges," American Bar Association Forum on Construction Law, 2011; "Innovative Arbitration for Advocates and Arbitrators," Indiana State Bar Association, 2012; "The Neil Shook Advanced Bankruptcy Roundtable," Indianapolis Bar Association, 2017; Co-Author, "The Intersection of Construction Law and Bankruptcy," 30 THE CONSTRUCTION LAWYER 11 (Winter 2010); Chapter 6 on "Indemnity," CONSTRUCTION SUBCONTRACTING: A COMPREHENSIVE PRACTICAL AND LEGAL GUIDE, American Bar Association, 2014; Co-Editor, INDIANA CONSTRUCTION CITES, Indiana State Bar Association Section on Construction & Surety Law, 2005-06; Program Coordinator, "The 2007 AIA Documents: New Forms, New Issues, New Strategies," American Bar Association Forum on Construction Law, 2008; Co-Chair, Annual Meeting of the American Bar Association Forum on Construction Law, "The Future of Construction Law and Construction Law Practice," American Bar Association Forum on Construction Law, 2013.