

Terence J. Scanlan

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Introduction

For more than 20 years, Terry has represented commercial entities with an emphasis on engineering and architectural firms in complex civil litigation in state and federal courts. His litigation practice includes contract disputes, risk management, professional negligence, errors and omissions claims, as well as wrongful death claims and catastrophic torts. Design professionals, consulting firms, local governmental entities and many others have learned to rely on Terry's experience in mediation, litigation and trials.

Terry has a wealth of trial experience that began when he worked as a prosecutor focused mostly on violent crimes. His work as a prosecutor laid the foundation for a long career of trial success—he has tried cases in front of more than 70 juries and many more bench trials, with clients of all sizes. Terry translates this experience to his current commercial litigation practice and utilizes his skills of problem solving and negotiation to identify the best strategic options for his clients.

With his deep knowledge of construction law, Terry has resolved issues between and on behalf of a wide variety of national and international design professionals. With a clear focus on helping businesses, individuals, regulators and government clients to articulate their expectations and their perspectives, he works hard to increase mutual understanding and the goodwill needed to keep a project moving.

In addition to his litigation practice, Terry is also a skillful mediator. He leverages his knowledge and experience to help parties discern a path to resolving their disputes on terms they can embrace as an alternative to the limited resolutions possible by way of a trial verdict. He understands that mediation allows for creative solutions to obtain results not possible in court and he works with parties to pursue those options.

Experience & Results

Design & Construction Litigation

- **Seattle Tunnel Partners, et al v. Washington Department of Transportation, et al:** Retained by Shannon & Wilson to defend claims totaling \$640 million brought by Seattle Tunnel Partners and Hitachi Zosen against WSDOT and members of its design team, including Shannon & Wilson. The claims concerned the design and operation of a deep-bore tunnel boring machine and related issues following the failure of the TBM once tunnel construction was commenced. Tunneling operations were interrupted for almost two years and an extensive rescue and repair process was implemented, resulting in multiple claims between involved parties. Claims by both STP and Hitachi Zosen were settled when Shannon & Wilson's respective dispositive motions against each were pending; the respective six-figure settlement amounts fully resolved the entirety of the \$640 million dollar claims against Shannon & Wilson.
- **Municipality of Anchorage v. ICRC, et al.:** Retained by GeoEngineers to defend a \$340 million claim brought by the Municipality of Anchorage against its contractors and design team in the U.S. District Court for the District of Alaska (AK), regarding the development of 9000 linear feet of commercial port facility. The project entailed design and construction of container shipping and barge berth facilities utilizing an open-cell sheet pile system at the Port located in a seismically active zone. The litigation centered on whether the constructed system and geotechnical analysis underpinning the system was appropriate for surviving a 500-year seismic event. While Geoengineers' dispositive motion was pending, the case settled for a six-figure amount, fully resolving the Municipality's \$340 million claim.

- **King County v. Kiewit-Massman:** Retained by King County regarding claims arising from the construction of the new South Park Bridge spanning the Duwamish River. The King County Superior Court (WA) lawsuit centered on determining responsibility for delays and cost overruns that were in a dispute with the contractor, Kiewit-Massman. Kiewit claimed the County was responsible for more than \$35 million in damages. The case was settled by Kiewit surrendering more than 80% of its claim in exchange for a nominal payment by the County, which allowed the project to be completed within its original budget.
- **University of Oregon v. Hoffman Construction, et al.:** Retained by Catena Consulting Engineers in a \$42 million lawsuit arising in Lane County Superior Court (OR) brought by the University of Oregon against the designers and builders of a large residential hall project on the Eugene, OR campus. Three new dormitories experienced substantial deflections on all floors of each building. Terry proposed an alternative resolution process which guaranteed repair by a certain date for an agreed-to repair scope of \$6 million. This also removed the University from the litigation and shifted the remaining parties to an arbitration track. All parties agreed to this approach. With the University out of the case, the remaining parties were subsequently able to negotiate a settlement to allocate funding between five contractors and two design firms, resolving the case.
- **Ft. Knox Gold Mine v. Knight Piesold:** Retained by Knight Piesold in a \$6 million claim brought in Fairbanks Superior Court (AK), initiated by Ft. Knox Gold Mine regarding a slope failure at a gold mining operation in south central Alaska. Early melting of a permafrost layer resulted in an entire heap leach mining system to slide downslope requiring repair to the system and delay to mining operations. Early in the litigation, Terry presented technical information rebutting the causation theory of the mine owner and its insurer. The \$6 million claim was settled for a significantly lower six-figure payment well below cost-of-defense.

Wrongful Death & Catastrophic Tort Litigation

- **Donnelly v. HDR Architecture, et al.:** Retained to represent HDR Architecture in a lawsuit brought in King County Superior Court (WA), involving catastrophic injuries suffered by a state worker at a facility designed by HDR. The injured plaintiff and his family sought \$42 million in damages against HDR, as well as two co-defendants, a general contractor and subcontractor. After a five-week jury trial, the jury returned a unanimous verdict in favor of HDR, finding no liability and awarding no damages.
- **Zimmerman et al v. Tesoro, et al.:** Retained to represent Matrix Service Co. in a wrongful death lawsuit brought in Skagit County Superior Court (WA), initiated by the families of seven refinery workers killed during a catastrophic explosion at the Tesoro Refinery in Anacortes, Washington. Terry provided a full defense for Matrix in this litigation with damages sought near \$100 million. Matrix brought a successful motion for summary judgment, seeking discharge of all claims. Matrix was completely dismissed from the case with prejudice.

Education

- Seattle University (B.A., Economics, 1983)
- Seattle University School of Law (J.D., 1986)

Admissions

- Washington
- Oregon
- Alaska
- US District Court, Western District of Washington
- US District Court, Eastern District of Washington
- US District Court, District of Oregon
- US District Court, District of Alaska
- US Court of Appeals for the Ninth Circuit

- US Supreme Court

Awards/Honors and Organizational Memberships

- Ranked in Washington State by *Chambers USA* in the area of Construction since 2019
- Martindale-Hubbell AV® Preeminent 5.0 out of 5
- King County Bar Association, Member, Past Board of Trustees (2006-2009); Judicial Screening Committee, 1999-present (Past Co-chair); Volunteer for Legal Neighborhood Clinics Program (1999-present)
- American Council of Engineering Companies (ACEC), Member, Legal Counsel Forum
- American Council of Engineering Companies of Washington (ACEC-WA), Member
- Geoprofessional Business Association, Member, Chair of Legal Affairs Committee
- ACE Mentor Program of America, Member, Board of Directors

Publications/Speaking Engagements

- Speaker, "Contracts and Risk Management for Design Professionals," Geoprofessional Business Association Presentation (April 2018)
- Speaker, "Controversial Projects/Controversial Clients – Managing Risk," Geotechnical Business Association Presentation (October 2016)
- Speaker, "Controversial Client/Controversial Projects" Geoprofessional Business Association Presentation (September 2016)
- Speaker, "Differing Site Conditions," Design Build Institute of America Presentation (May 2015)
- Speaker, "Indemnity Clauses: The Good, the Bad and the Ugly," ASFE Presentation (April 2014)
- Speaker, "Case Studies on Site Safety Issues in Construction," ACEC-WA Presentation (January 2014)
- Speaker, "Differing Site Conditions," Design-Build Institute of America Presentation (May 2013)
- Speaker, "Case Studies on Site Safety Issues in Construction," ASFE Presentation (April 2013)
- Speaker, "Indemnity Clauses: the Good, the Bad and the Ugly," ASFE Presentation (April 2013)
- Speaker, "A Primer on Contracting Principles, Do's and Don'ts for Design Professionals," Society for Design Professional Administration Presentation (February 2013)
- Speaker, "Indemnity Clauses: The Good, the Bad and the Ugly," ACEC-WA and ACEC-OR Presentation (June 2012)
- Author, "Limitation of Liability Clauses: Contracting Issues," ACEC-WA Presentation (April 2012)
- Speaker, "The Michaels Case: A Double Blow to Design Professional Immunity and the Standard of Care in Washington," Geoprofessional Business Association, ACEC-WA, ASCE-WA, APWA Presentation (January-February 2012)
- Speaker, "Shifting Sands Beneath the Economic Loss Doctrine," ACEC-WA Presentation (January-February 2012)
- Author, "The Death of the Economic Loss Doctrine; How the Independent Duty Doctrine Creates Uncertainty for Design Professionals" (August 2011)
- Speaker, "Deposition Preparation for Engineers," ASFE Presentation (April 2009)
- Co-Author, "The Design Professional and Tort Liability, Design Professional and Construction Manager Law," ABA Publication (2009)
- Co-Author, "Design Professionals and Underground Utilities" (February 2003)

- Author, "Economic Loss Doctrine and Design Professionals: Recent Trends and Developments" White Paper (September 2001, updated: 2004, 2009, 2016)