

**Vernon C. Howerton, Jr.**  
Senior Counsel

Vernon Howerton helps businesses avoid and resolve commercial disputes through negotiation, alternative dispute resolution and litigation, with an emphasis on construction and government contract law. He has more than 25 years of experience helping construction owners, contractors, subcontractors and suppliers enforce and defend their rights in disputes arising from public and private heavy civil, industrial, telecom and commercial project contracts, including claims related to changed work, extra work, differing site conditions, defective specifications, suspensions, delays and construction defects. Vernon also presents and defends various bid protests related to federal, state and local government contracts and defends OSHA citations for workplace safety violations.

Vernon protects his clients outside the adversarial setting as well. He has significant experience negotiating and documenting construction contracts and advising clients on the risks associated with various transactions. He also represents small, disadvantaged, minority- and women-owned businesses in certification disputes and helps government contractors and vendors overturn the denial of DBE, MBE and WBE participation credits.

Clients also trust Vernon to solve problems that go beyond construction law and impact the other areas of their businesses. Whether he personally handles every aspect of the case or oversees another experienced lawyer at the firm, Vernon can help clients resolve any issue they may encounter, including employment disputes, tax controversies, personal injury claims and much more.

In addition, he is a member of the American Arbitration Association's National Roster of Arbitrators.

**Experience**

- Obtained \$4.6 million award of balances owed under six agreements



**Vernon C. Howerton, Jr.**  
1601 Elm Street  
Suite 4600  
Dallas, TX 75201  
vhowerton@grayreed.com

D: 469.320.6058  
T: 214.954.4135  
F: 469.320.6853

**Industries**  
Construction

**Practices**  
Construction  
Commercial Litigation

**Education**  
J.D., University of Richmond (1992)  
B.A., University of Virginia (1988)

**Bar Admissions**  
Texas  
Oklahoma  
Virginia, Inactive

**Court Admissions**  
United States Court of Appeals, Fourth Circuit  
United States Court of Appeals, Fifth Circuit  
United States District Court, Northern District of Texas  
United States District Court, Eastern District of Texas  
United States District Court, Eastern District of Oklahoma  
United States District Court, Eastern

to design and construct oilfield solid and liquid waste processing and disposal facilities located in Texas, Oklahoma and Wyoming on behalf of design-builder following termination for default, including defense of counterclaims by Owner in excess of \$20 million for alleged defective design and construction of the facilities as co-first chair at three week arbitration hearing.

District of Virginia  
United States District Court, Western  
District of Virginia

- Representation of Texas public hospital district in implementation of replacement hospital program with estimated cost in excess of \$1 billion.
- Representation of owner in resolution of over \$7 million in lien claims filed against 20,000 sf restaurant space following abandonment of contract by prime contractor and prosecution of claims against owner's contractor, construction manager and design professionals.
- Obtained mediated settlement from developer, homeowner's association and road designers on behalf of plaintiff owners of \$2 million residence after house suffered catastrophic damage from landslide caused by defective design and construction of adjacent street supported by mechanically stabilized earth walls.
- Obtained \$1.25 million arbitration award of lost profits in favor of government subcontractor against prime contractor for wrongful termination of subcontract to provide hardware and software maintenance and support services to U.S. Air Force after three day arbitration trial as first and only chair.
- First chair prosecution of Oklahoma administrative appeal hearing leading to ten year debarment of contractor for substituting unapproved aggregates into defective pavement and submitting false information concerning use of subcontractors and subsequent representation during administrative review process.
- Co-chair arbitration defense of Oklahoma DOT to take nothing award in favor of contractor on \$3.5 million claim to recover costs incurred to remove and replace approximately 5 miles of defective asphalt

pavement.

- First chair bench trial in federal district court of quantum meruit claim for extra costs incurred by Design-Builder in construction of medical research laboratory on “flash track” basis after parties failed to agree upon final guaranteed maximum price.
- Representation of low bidder during proceedings related to protest of award of \$60 million pipeline construction contract by Public Works Department.
- Negotiation of bond claim settlements with multiple suppliers and second tier subcontractors following termination and bankruptcy of first tier tunneling subcontractor for original contractor on Texas public works project.
- Solo construction arbitration in Montana to award in favor of Texas subcontractor of competing claims for subcontractor caused delay to Montana prime and extra work by subcontractor on project to rehabilitate waste water structures in Virginia Beach.
- Preparation and litigation of differing site conditions claim by Texas horizontal directional drilling subcontractor against prime and third party defendant Texas municipality to mediated settlement following equipment failures, production loss, and delay caused by unforeseen and unusual rock mechanics.
- Defense of project owner / developer of \$20M retail center in Alaska against multiple change order requests for extra work and delay and prosecution of counterclaims to mediated settlement.
- Solo jury trial to plaintiff’s verdict on behalf of owner of medical office building against manufacturer of leaking EPDM membrane roof (Medical City Dallas, Ltd. v. Carlisle Corp. et al., 192nd District Court of Dallas County).
- Litigation defense of Oklahoma DOT of suit by prime contractor who provided routine highway maintenance in Oklahoma City and Tulsa,

following termination of contracts, and prosecution of counterclaims.

- Arbitration defense of claim against state DOT arising from state directive to remove and replace \$3,000,000 of defective asphalt pavement and subsequent prosecution of debarment action on behalf of state related to substitution of unapproved aggregate materials and false subcontract reporting.
- Leading three project teams of engineers, consultants and attorneys responsible for preparation and presentation of multimillion dollar claims for additional compensation in connection with the expansion of terminal facilities at two major international airports.
- Arbitration defense on behalf of prime contractor of a multimillion dollar claim by subcontractor for changes arising from a fiber innerduct installation contract, and prosecution of counter claims for defective workmanship by subcontractor.
- Defense of claim by at-risk construction manager for delay and extra costs incurred during performance of contract to build digital wireless communications networks in multiple major trading areas.
- Litigation defense of multimillion dollar claim for delay/cover/fraud by prime contractor following termination of structural steel supply contract for expansion of a petrochemical plant, and prosecution of counterclaims on behalf of steel supplier.
- Prosecution and analysis of prime contractor claims for return of liquidated damages and recovery of extras spent in constructing 450 megawatt cogeneration facility.
- Negotiation of termination for convenience settlement of microtunnelling contract on behalf of prime contractor following discovery of massive differing site conditions.
- Representation of high rise apartment complex prime contractor during default termination and subsequent bankruptcy of major,

bonded trade subcontractor.

- Defense of various OSHA citations for serious, willful and repeat violations, including citations involving job site fatalities (excavation, blasting and confined space).
- Defense and trial in U.S. District Court, on behalf of public owner, of differing site condition/defective design claim brought by prime contractor.
- Litigation of builders risk insurance coverage dispute on behalf of contractor as a result of insurer's cancellation of subcontractor coverage without notice to contractor.
- Representation of low bidder in defense of protest of award of \$40 million large diameter water main contract by North Carolina utility district.
- Representation of disappointed offeror in protest of award of San Francisco area bridge electronic toll collection contract.
- Negotiation and drafting of favorable prime contract terms on behalf of owner of a \$30,000,000 hospital expansion project.
- Preparation of contract documents for owners for use in the fast track construction of a national restaurant chain.
- Preparation of form contract documents for construction of a multi-facility national chain of continuing care retirement communities.

### **Reported Decisions**

- *In re T.S.C. Seiber Services, L.C.*, 771 F.3d 246 (5<sup>th</sup> Cir. 2014)
- *Dunham Engineering, Inc. v. Sherwin-Williams Co.*, 404 S.W.3d 785 (Tex. App. – Houston [14th Dist.] 2013, no pet.)
- *Medical City Dallas, Ltd. v. Carlisle Corp.*, 251 S.W.3d 55

(Tex. 2008).

- *Boar's Head Provisions Co. v. Woodley*, 1995 WL 550377 (Va. App. 1995).
- *Farm Fresh v. Golicic*, 1995 WL 592831 (Va. App. 1995).

### Thought Leadership

- “The Disadvantaged Enterprise Business Program”, *Construction Business Owner Magazine* (October 2019)
- “Four Safeguards for Material and Labor Price Variability”, *Construction Executive* (October 4, 2018)

### Speeches and Presentations

- “Essential Construction Contract Provisions”, Sterling Real Estate Development and Construction Law Seminar (January 17, 2013)
- “New Strategies for a New Economy: Understanding IPD and P3”, Society for Marketing Professional Services, Dallas, Texas (March 2, 2011)
- “Issues Relating to Construction Scheduling and Delays”, Texas Department of Criminal Justice (September 22, 2009)
- “Construction Scheduling and Delay Issues”, Texas Department of Criminal Justice, Huntsville, Texas (September 22, 2009)
- “Tricks, Traps and Ploys Used in Construction Scheduling in Texas” (April 29, 2009)
- “Public Contracts and Procurement Regulations in Texas”, Lorman Educational Services, Dallas, Texas (February 12, 2008)
- “Complete Maintenance Privatization: Can You Make It Work”, Transportation Research Board 86th Annual Meeting, Washington,

DC (January 23, 2007)

- “Preliminary Notices and Mechanic’s Liens”, National Association of Credit Managers Southwest’s Construction Boot Camp, Las Colinas, Texas (September 8, 2006)
- “Maintenance Privatization - the Oklahoma Experience”, Transportation Research Board 45th Annual Workshop on Transportation Law, Chicago, IL (July 25, 2006)
- “Tricks, Traps, And Ploys Used In Construction Scheduling in Texas ”, Lorman Educational Services, Fort Worth, Texas (November 11, 2005)
- “Avoiding Fraud in Highway Construction”, Co-sponsored by the Associated General Contractors of Iowa and the Iowa Department of Transportation, Ames, Iowa (March 2, 2005)
- “Avoiding DBE Program Fraud”, Virginia Road and Transportation Builders Association (December 9, 2004)
- “Getting Paid”, American Traffic Safety Services Association, Dallas, Texas (February 12, 2002)
- “Payment and Bonding”, American Traffic Safety Services Association, Fort Lauderdale, Florida (February 1, 2001)

### Organizational Involvement

### Professional Activities, Memberships & Affiliations

- State Bar of Texas
  - Litigation Section
  - Construction Law Section
- Virginia State Bar

- Construction Section
- Dallas Bar Association
- Construction Section

**Community Involvement, Memberships & Affiliations**

- Former Board Member and Secretary, Refugee Services of Texas, Inc., Dallas
- Board Member, The Wilkinson Center, Dallas (2005 - 2012)