



Giovanni M. Ruscitti, Esq.

Denver, Colorado



Primary Areas of Expertise

Complex Construction Disputes
Healthcare
Mergers & Acquisitions
Real Estate Development
Officer and Director Liability
Oil, Gas, Energy

Current Employer-Title	Berg Hill Greenleaf & Ruscitti LLP - Chairman and General Counsel, Member of Management Committee
Profession	Attorney, Arbitrator, Mediator
Work History	Managing Partner, Berg Hill Greenleaf & Ruscitti, LLP, 2016-Present; Founding Partner, Berg Hill Greenleaf & Ruscitti, LLP, 2001-Present; Special Counsel, Porzak Browning & Johnson, LLP, 1999-2001; Special Counsel, The Husted Law Firm, 1997-1999; Associate, Popham Haik Schnobrich & Kaufman Ltd., 1993-1997.
Experience	<p>Construction Substantial experience in representing owners, general contractors, subcontractors, suppliers, sureties, and insurers in complex construction disputes, including defect, delay, lost productivity, scheduling, breach, Bid protest, OCI Mitigation plans, coverage and complex litigation, including airport, broadband/fiber optics, data centers, energy, highway, infrastructure, mining, oil & gas, solar, wind, office building, multi-use, and condo construction projects. Advises clients on policies and procedures, lessons learned, and contracting guidelines. Extensive experience in drafting EPC, Prime, Subcontract, Supplier and Framework Agreements.</p> <p>Complex Commercial Litigation & Arbitration Extensive experience on complex domestic & international litigation and arbitration matters up to \$2.6B in dispute, including matters involving: cybersecurity; cryptocurrency; environmental law; fiduciary duty and corporate governance; healthcare; patents, trademark and copyright infringement, trade secrets, and unfair competition; cannabis; regulatory; FTC; SEC; TCPA; FCPA; consumer protection; fraud; ERISA and withdrawal liability; financial transactions; corporate and consumer finance; real estate; and insurance disputes.</p>

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Neutral ID : 158016

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Mergers & Acquisitions

Substantial experience with M&A transactions and disputes involving stock and asset purchase agreements, various merger types, reps and warranties, indemnity, purchase price adjustments, working capital issues.

Mining/Oil & Gas/Energy/Power

Extensive experience representing producers, suppliers, developers, investors and contractors in mining, oil and gas, power and energy disputes, including master service agreements, contract mining, management, breach of contract, fraud, investment, finance, supply agreement, and royalty litigation.

Substantial experience in: acquisitions and divestitures of operating coal, oil & gas, and energy properties and companies; negotiating and drafting purchase and sale documents; project finance; negotiating and documenting financing arrangements; and coal and energy supply agreements, including cost-plus, indexed and market-based pricing contracts.

Corporate/Governance

Extensive experience in litigation involving: buy-sell and shareholder agreements; stock option plans, profits interests agreements, and equity and stocks agreements; corporations/LLCs/JVs/partnerships, and business divorces; employment agreements; corporate governance, fiduciary duty, and covenants not to compete.

Commercial Contracts/Transactions/Real Estate/Banking

Substantial experience in as lead counsel in negotiating, structuring, drafting and enforcing various commercial agreements such as master services agreements, forbearance agreements, M&A (stock and asset purchase agreements, and various merger types in many industries), NDAs, financing agreements, professional service agreements, executive employment contracts, physician agreements, teaming agreements, development agreements, JV agreements, and franchise agreements.

Advises clients on organizing business entities, structuring strategic alliances, structuring commercial and IP transactions, and creating and protecting IP rights.

Substantial experience representing companies in connection with private placements, financing alternatives, including secured and unsecured credit facilities and debt or equity offerings.

Extensive experience in developing and implementing various exit strategies, including mergers, divestitures and succession planning, and has implemented various corporate restructurings, and re-capitalizations.

Substantial experience in all aspects of real estate transactions (office, retail, mall, and mixed-use), including development, leasing, and transactions for regional and national parties.

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Project Finance

Substantial experience representing parties in large project finance construction projects.

Mediator Experience

Over 14 years of experience as a facilitator/mediator in complex commercial and construction cases in numerous jurisdictions, including Colorado, California, Arizona, Washington, Idaho, Wyoming, Utah, Texas, Illinois, Florida, Delaware, and New York.

The construction facilitation/mediation matters have involved a broad spectrum of disputes and project types, including disputes involving: multi-party construction and design defects; multi-party delay, disruption and lost productivity; EPC, design build, design assist and T&M projects; defective specifications; differing site conditions; vertical and horizontal projects; hotel, condo, residential, industrial, power, oil and gas, highway, wastewater, telecommunications, fiber/broadband, data center and infrastructure projects; MEGA projects; and owners, general contractors, subcontractors and suppliers, design professionals, construction and program managers, insurers and sureties. The matters have ranged in size from hundreds of thousands of dollars up to hundreds of millions of dollars in dispute.

The commercial facilitation/mediation matters have involved a broad spectrum of disputes and industries, including disputes involving: cases involving breach of contract, fraud, breach of fiduciary duty, financing, bad faith breach of insurance contract, corporate governance, franchise, M&A, IP, and employment matters; and banking, finance, food and beverage, real estate, oil and gas, healthcare, emerging tech, biotech, cannabis, and numerous other industries.

Representative Issues Handled as a Mediator

Construction matters involving: multi-party construction and design defects; multi-party delay, disruption and lost productivity; EPC, design build, design assist and T&M projects; defective specifications; differing site conditions; vertical and horizontal projects; hotel, condo, industrial, power, oil and gas, highway, wastewater, data center and infrastructure projects; and owners, general contractors, subcontractors and suppliers, design professionals, construction and program managers, insurers and sureties. The matters have ranged in size from hundreds of thousands of dollars up to hundreds of millions of dollars in dispute.

Commercial matters involving: breach of contract, fraud, breach of fiduciary duty, bad faith breach of insurance contract, corporate governance, franchise, M&A, IP, and employment matters.

Mediator Style & Process Preferences

Every mediation is different, with each party having its own unique expectations, objectives/goals and experience with mediation. However, everyone wants to be heard and to settle if it meets their objectives. As a result, the mediation process will be customized to fit the needs of the case and parties. To do this, I use a combined Guided and Evaluative approach to mediation. This includes a robust

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progressive pre-mediation phase designed to ensure that the parties have sufficient information to allow for an understanding of risk and ultimate a settlement at the mediation. I use the pre-mediation phase to develop a relationship, educate the parties, and design the best mediation process that fits the dispute. This could include an exchange of information. The guided process includes ex-parte sessions with each party, their counsel (inside and outside counsel) and experts. These sessions can sometimes replace the traditional mediation statement process and provides hands-on access to the case, the witnesses and decision makers, and evidence. This is an effective way to quickly get to the main issues in the cases and to learn the parties' true objectives.

I view myself as first a facilitator to help the parties explore and focus on the reasons for settlement including their business interests, the issues, and the alternative if a settlement is not reached.

If facilitation does not work, and relaying on my substantial experience as an arbitrator, I engage in evaluative mediation where I attempt to educate each party as to the other party's arguments and how the trier of fact might view the issues. I also look for innovative ways and opportunities to help both parties' achieve their goals, including commercial resolutions. I use techniques that are appropriate for the circumstances of each case to break an impasse and reach a settlement, including a mediator's proposal.

Finally, mediation is not a one-day process. I will continue to work the process, even through trial and arbitration if I believe a mediation can/should be achieved. And my mediation success rate is over 95%.

Education

University of Denver College of Law (JD-1993); University of Colorado (MBA, Accounting-1993; BA, Economics-1989).

Professional Licenses

Admitted to the Bar: New York (2017), Colorado (1993); U.S. District Court: District of Nebraska, District of Colorado; U.S. Court of Appeals: Tenth Circuit; Federal Court of Claims.

Professional Associations

Fellow, College of Commercial Arbitrators; Best Lawyers (2020-2023); 5280 Magazine Top Construction Lawyers and Hall of Fame; BizWest - Top Arbitrator/Mediator; Member of AACE International; American Bar Association (Torts and Insurance Section; Business Section; Litigation Section; IP Section); ABA Dispute Resolution Committee; Colorado Bar Association; New York Bar Association; American Trial Lawyers Association; DRI Complex Commercial Litigation and ADR Subcommittees; 2017/18 Chair of Publications, DRI ADR Subcommittee; Rocky Mountain Mining Association; Colorado Mining Association; Associated General Contractors of Colorado - Associate Counsel; Associated General Contractors of Colorado - Legislative Committee; Chair of the Boulder Economic Council; Member of the Board of Directors of the Boulder Chamber of Commerce; Member of Metro Denver Chamber Board of Directors; BizWest - Most Influential Business Leaders in Colorado (2022; 2023).

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Recent Publications & Speaking Engagements

Numerous presentations to senior management for corporate clients and organizations on broad range of topics:

"Learning from Each Other: A Roundtable of Arbitrators Discussing Key Arbitration Issues" (College of Commercial Arbitrators Annual Meeting, 2024 - San Diego)

"Arbitration Fundamentals and Best Practices for New AAA Arbitrators" (Hawaii, 2024)

"Breakfast with General Counsel – What Keeps Them Up at Night in the Era of Emerging Technologies" (AAA Construction Conference, 2024 - Miami)

"Hot Topics for Arbitrators" (College of Commercial Arbitrators Annual Meeting, 2023 - Wash. DC)

"Builder's BootCamp" - Best Practices for Construction Disputes (2023, Northern Colorado)

"The Best Defense is a Good Offense - Keys to Claims Prevention and Mitigation" (Construction SuperConference, 2023 - Miami)

"Anatomy of a Construction Arbitration" (AAA Case Manager Presentation, 2023)

"Breakfast with General Counsel – Collaborating to Minimize Risk from the Construction Team Perspective" (AAA Construction Conference, 2023 - Santa Monica)

"Breakfast with General Counsel – Clients Perspectives in Construction Arbitration" (AAA Construction Conference, 2022 - New York)

"Construction of Alternative Energy Projects: Global Challenges" (Construction SuperConference, 2022 - Las Vegas)

"Failure to Properly Consider Damages Could be Catastrophic for Your Construction Claim - From an Arbitration Perspective (Construction SuperConference, 2021 - Orlando)

"Fireside Chat with General Counsel – Managing Construction Disputes Systematically" (AAA Construction Conference, 2021)

"Preparing for Virtual Arbitration Hearings: Tips and Best Practices for Counsel" (Presentation for AAA, 2021)

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"Advocacy in Arbitration 2021: COVID and Beyond" (Presentation for Colorado Bar Association, 2021)

"Customizing Mediation Techniques for Complex Construction Disputes and Avoiding the Mediator Shuffle" (Construction SuperConference, 2019 - Miami)

"Breakfast with General Counsel – Arbitration from the Client's Perspective" (Presentation for AAA, 2019 - Santa Monica)

"Complex AAA Construction Cases - Lessons Learned to Maximize Efficiency" (Presentation for AAA, 2018)

"Simplifying Your Case for Arbitrators and the Value of Formal Arbitration Rules and Administration" (Presentations for AAA, 2018)

"Managing Innovation - The General Counsel's and CEO's Perspective" (Presentation, 2018)

"Managing Risk in Construction Industry" (Presentation, 2018)

"Hot Topics in Construction Industry - 2018 and Beyond" (Presentation, 2018)

"Managing Project Risk - From Contract Negotiation to Dispute Resolution, and All Stages in Between (Presentation, 2018)

"Defective Defect Laws" (Presentation and Paper, 2016)

"Restrictive Covenants in the Construction World" (Presentation and Paper, 2016)

"Flow-Down Provisions: A Case Study "(Presentation and Paper, 2016)

"Best Practices with UCC Warranties" (Presentation and Paper, 2016)

"Best Practices in Negotiating Environmental Reclamation and Remediation Contracts" (Paper, 2015)

"Issues in Project Finance" (Presentation and Paper, 2015)

"What to Do When a Good Project Goes Bad" (Presentation and Paper, 2014);

Contributing author and/or editor on BHGR articles relating to:

"Construction Industry Best Practices : Adapting to COVID-19," (2020)

"Conflicting Interest Transaction," (2009),

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"Buying or Selling a Business? Consider a Non-Compete Agreement," (2009),
"New Patent-ability Standards Post-Bilski Decision," (2009)
"New Ruling in Non-Compete Agreements with Employees," (2009);
Construction Delays - Proving and Pricing Claims, 2003 (Presentation and Paper);
Liability of Surety for Loan to Principal from Estate, The Law of Probate Bonds,
2001 (ABA TIPS Section);
Good Faith and Fair Dealing - Rocky Mountain Handbook, 1997;
Contributing author, "Law and Economics," ECONOMICS, Byrns and Stone, 5TH
ed.,

**Citizenship
Languages**

United States of America
English; Italian

Compensation

Hearing:	\$495.00/Hr
Study:	\$495.00/Hr
Cancellation Period:	0 Days
Comment:	To help defer the costs of arbitration, travel time will not be charged.

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