



**Diane J. Zelmer**  
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Diane J. Zelmer is an attorney in the Shutts & Bowen Construction Litigation Group in Miami, representing clients in general commercial litigation matters, with a concentration in construction and surety law. Prior to joining Shutts & Bowen, Ms. Zelmer practiced with a boutique construction litigation law firm, representing sureties, owners, public and private contractors in both trial and appellate proceedings. She has experience in construction lien claims and contractual disputes, involving construction and latent defects, design defects, time delays, additional work and change orders, guaranteed maximum pricing, unforeseen site conditions, wrongful termination and enforceability of no damage for delay and liquidated delay damage clauses. She also has experience with payment and performance bond actions, involving equitable subrogation, setoff priorities to contract balances, conditional payment bonds, and timely compliance with notice.

In addition, Ms. Zelmer's diverse background qualifies her to provide a practical industry perspective to her construction clients, who are necessarily impacted by inter-related practice areas. In addition to her construction and surety practice, Ms. Zelmer has a broad range of experience at both the litigation and transactional level, representing clients in accounting, international law, taxation, asset protection, securities law and corporate law. During Summer 2005, the Ms. Zelmer was selected for the U.S. Securities & Exchange Commission Summer Honors Program in Miami, Florida, and during Spring 2006, she interned as a law clerk to U.S. District Judge James I. Cohn in the Southern District of Florida. While at the University of Florida, College of Law, Ms. Zelmer served as a member of the Florida Law Review, where she received the Best Research Award and served on the Publication Committee. In April 2005, The Florida Law Review selected Ms. Zelmer's case comment for publication. Prior to attending law school, Ms. Zelmer obtained experience as an accountant, concentrating in foreign payroll taxation as well as U.S. corporate and individual taxation. Ms. Zelmer also has eight years of experience as a paralegal in corporate law, estate planning, probate, taxation, foreign trusts, and asset protection.

## **Representative Experience**

### **Appeals**

- In appeal representing surety in dispute concerning appellant's alleged affirmative claim against surety for liquidated delay damages caused by defaulting contractor and surety's setoff priority to contract balances under theory of equitable subrogation, as associate counsel, prepared the answer brief, successfully defending appeal. The Eleventh Circuit upheld the trial court's mandate, denying appellant liquidated delay damages under both setoff and affirmative claim theories, and granted surety additional relief by remanding to increase the amount of pre-judgment interest. Unpublished decision: 2007 WL 1047070 (11th Cir., Case No. 06-14614, Apr. 9, 2007) (non-oral argument calendar).
- In appeal representing general contractor in public contracting action, as associate counsel, co-authored the answer brief, successfully defending trial court's order for new trial of damages only, upholding liability. Unpublished decision: 2008 WL 186202, (Fla. 1st DCA, Case No. 2005-CA-3143, Jan. 23, 2008) (per curiam, affirmed).

## Decisions/Settlements

- In action representing surety against principal on supersedeas bond, as associate counsel successfully prosecuted action on grounds of equitable subrogation, written assignment, § 55.13 of the Florida Statutes, and prepared the Motion for Summary Judgment, which was instrumental in obtaining settlement on eve of hearing in the amount of \$2,000,000, plus final judgment in the amount of \$34,686,321.21, with \$5,000,000 cash buy out within 60 days.
- In action representing general contractor against FDOT to recover additional compensation for design defects, time delays, weather delays, additional work, and unforeseen site conditions, as associate counsel, successfully prosecuted action and obtained settlement in the amount of \$210,000.
- In public FDOT contracting action involving trespass and eminent domain, successfully defended general contractor obtaining nominal settlement in contractor's favor.
- In action representing general contractor against engineering firm in public contracting action, as associate counsel, prepared the motion for summary judgment, successfully defending counter-claims on grounds that no contract existed because it constituted an "agreement to agree," resulting in entry of final judgment in favor of plaintiff.
- In action representing lessee contractor against lessor, as lead counsel for plaintiff, obtained settlement for full refund of deposit, plus attorneys' fees and costs.
- In action defending owner against subcontractor, as associate counsel, prepared and argued motion to dismiss, successfully obtaining dismissal of subcontractor's equitable claims against owner on grounds that subcontractor failed to first exhaust remedies against general contractor.

## Publications

- *Constitutional Law: Convicting Detainees For Refusing to Answer Law Enforcement's Commonsense Inquiries Makes No Commonsense*, 57 Fla. L. Rev. 459 (April 2005)

## Education

- J.D., *Order of the Coif*, University of Florida, 2006
- B.S., *summa cum laude*, Accounting, Florida Atlantic University, 2003

## Court Admissions

- U.S. District Court for the Southern, Middle and Northern Districts of Florida
- U.S. Court of Appeals, 11th Circuit

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