



## **Mark S. Himmelstein**

Partner

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Mark Himmelstein is a partner in the Newport Beach office and practices in the areas of construction, real estate, business and insurance litigation. He also specializes in drafting and negotiating construction and real estate contracts.

### **Litigation**

Mark helps commercial and residential developers and general contractors protect the profitability of their projects by timely and efficiently handling claims that arise during and after construction. He advises clients on issues throughout the construction process including change order claims, mechanics' liens, repair of defective work, supplementation, termination of contracts and insurance compliance. After construction, he litigates claims concerning cost overruns and delays, construction accidents, contract matters, fee disputes, construction defects, and Contractor's License Board disputes. He handles all aspects of insurance claims and litigation that impact these matters.

### **Construction Contracts and Risk Management**

Mark works with his clients to develop contract forms that protect their best interests and to efficiently negotiate contracts so that the clients can move forward with their projects. He has drafted and negotiated hundreds of owner-contractor agreements, subcontracts, design professional agreements, home improvement contracts, and other construction documents.

Representative matters include:

- Obtained Defense verdict on behalf of national residential developer in lengthy jury trial of a landslide case.

- Successfully defended structural design case in arbitration against home builder in which plaintiff received no recovery on all structural claims.
- Obtained 100% recovery of change order claims in litigation on behalf of general contractor against school district.
- Prepare, update and negotiate owner-contractor, subcontract and consultant contract forms for residential and commercial developers.
- Negotiate owner-contractor agreement for developer of affordable housing project.
- Negotiate owner-contractor agreement for developer of retail center.

A frequent lecturer and author, Mark has written numerous articles on construction contract and risk management issues. He has also spoken at construction and real estate industry events, on topics including risk management, Fix-It-Law, contract provisions, urban infill issues, and litigation developments.

Mark is on the Executive Committee of the Board of Directors of the Building Industry Association of Orange County (BIA OC). He also chairs BIA OC's Membership Committee. Mark has been named BIA OC Associate of the year and Newmeyer Dillion is a past recipient of BIA OC's Associate Member Company. He is also on the Board of Directors of the Anaheim Chamber of Commerce and chairs the Chamber's Legislative Committee.

For the last ten years, Mark has been named to the roster of "Southern California Super Lawyers," an annual peer-review survey conducted by Law & Politics magazine. Southern California Super Lawyers is a compilation of the top 5 percent of attorneys in the area and is also published in Los Angeles Magazine. In addition, he is AV® Preeminent rated by Martindale-Hubbell, the highest rating an attorney can achieve from that publication. An AV® certification mark is a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence.

Mark has served on a committee to raise funds for Easter Seals of Southern California and is has been active in Orange County's Construction fundraiser for the Orange County Food Bank.

### **Services**

- Business Litigation
- Construction Litigation
- Real Estate Litigation
- Construction Contracting

### **Awards & Recognition**

- Recipient of the Building Industry Association of Orange County's Gwen Rosebeary Award
- Selected to the Southern California Super Lawyers list
- AV® Preeminent rated by Martindale-Hubbell

### **Professional Affiliations**

- Building Industry Association - Orange County, Board of Directors, Executive Committee and Chair Membership Committee
- Orange County Bar Association
- Anaheim Chamber of Commerce – Board of Directors; Chair of Legislative Committee

### **Admissions**

- California, 1982
- U.S. District Court, Central District of California
- U.S. District Court, Southern District of California

### **Education**

- University of the Pacific, McGeorge School of Law (*J.D., with honors, 1982*)
  - American Jurisprudence Awards in Torts and Political Science
- Duke University (*B.A., 1979*)

## **Publications**

June 14, 2017

**The California Legislature Passes SB 496 Limiting Design Professional Defense and Indemnity Obligations**