



Kenneth A. Cushing

Member

Philadelphia

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Practice Areas

- Commercial Litigation
- Construction Law
- Infrastructure

Industry Sectors

- Real Estate & Construction

Education

- Wake Forest University School of Law, J.D., *cum laude*, 2015
- Southwest Minnesota State University, M. Ed., 2010
- University of Notre Dame, B.A., 2007

Bar Admissions

- New Jersey
- Pennsylvania
- Texas

Court Admissions

- U.S. Supreme Court
- U.S. District Court -- Eastern District of Pennsylvania
- U.S. District Court -- Northern District of Illinois

Awards & Honors

- Chambers and Partners USA, 2021-2024. This award is conferred by Chambers & Partners. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.
- Pennsylvania Super Lawyers "Rising Star" 2023-2024. This award is conferred by Super Lawyers. A description of the selection methodology can be found [here](#). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.

Clerkships

The Honorable Federico A. Moreno in the U.S. District Court for the Southern District of Florida

Kenny focuses his practice on construction law. He counsels and represents project owners, developers, contractors, and design professionals in all phases of public and private construction projects, agency appeals, and the dispute resolution process on a wide range of projects from traditional vertical construction to some of the largest intrastate and interstate linear infrastructure projects. Kenny represents Fortune 100 midstream companies, natural gas companies, heavy highway and civil contractors, general and specialty contractors, engineering, architectural, and design firms, real estate developers, golf and country clubs, retailers, homebuilders, universities, long-term care facilities, condominium associations, and other industry stakeholders across the country. He navigates clients through challenges in project management, litigation, arbitration, appeals, and bankruptcy, as well as bond claims, insurance claims, and mechanics' liens claims. Kenny also counsels clients through the contract negotiation and drafting process, and has drafted and negotiated construction and design services agreements for projects across the country.

Kenny maintains an active pro bono practice, most recently representing Veterans before the Board of Veterans Appeals and U.S. Court of Appeals for Veterans Claims, and drafting and negotiating construction services agreements for the Kimmel Center in Philadelphia.

Kenny was a law clerk to The Honorable Federico A. Moreno in the U.S. District Court for the Southern District of Florida. While earning his law degree, Kenny was a judicial intern to The Honorable Gene E.K. Pratter in the U.S. District Court for the Eastern District of Pennsylvania. Prior to studying and practicing law, Kenny was a college football coach for four years following one year of service as an AmeriCorps volunteer teacher.

Experience

Secured a favorable jury verdict for a client working as a subcontractor to a multibillion-dollar design and construction firm on a 60-unit wind turbine complex in Illinois. The case centered on the termination of the subcontract during the project, and the trial was before a jury in the U.S. District Court for the Northern District of Illinois — on damages only — after the Court found the subcontract had been terminated properly for cause. The issue presented to the jury was the amount of damages owed to the general contractor following the subcontractor's termination. Although the general contractor sought more than \$30 million in damages, the jury awarded the general contractor only one dollar.

Successfully represented a Fortune 100 midstream energy company (joint venture) in defense of claims of more than \$100 million by a pipeline contractor arising from the construction of the 700-mile Rover natural gas pipeline through Pennsylvania, West Virginia, Ohio, and Michigan. After a 9-day trial in Harris County, Texas, the court awarded the contractor only \$1.1 million of \$63.1 million in breach of contract damages and denied all other tort and quasi-contract claims. The court then awarded the client \$13.7 million on its counterclaims for breach of contract, as well as attorneys' fees and costs. *U.S. Pipeline, Inc. v. Rover Pipeline LLC*, 333rd Judicial District of Harris County, Texas, No. 2018-39920.

Provide project counseling and dispute resolution for a Fortune 100 midstream energy company related to design and construction issues arising from the construction of the 350-mile Mariner East 2 pipeline

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through Pennsylvania, West Virginia, and Ohio. Representative examples of the representation have included the following: (i) negotiated and settled several hundred million dollars in change order requests submitted by various pipeline contractors; (ii) prosecuted, defended, and settled several hundred million dollars in claims arising from a pipeline contractor's termination and subsequent bankruptcy (*In re Welded Construction, L.P.*, et al., U.S. Bankruptcy Court for the District of Delaware, No. 18-12378 (KG)); (iii) defense of a \$55 million claim by a pipeline contractor in the Philadelphia County Court of Common Pleas (*Associated Pipe Line Contractors, Inc. v. Sunoco Pipeline, L.P.*, et al., Philadelphia Court of Common Pleas, No. 1806001483); (iv) negotiated insurance and indemnity claims arising from the defense and settlement of a landowner class action; and (v) defended and settled a subcontractor payment claim in the Westmoreland County (Pa.) Court of Common Pleas. (*McCutcheon Enterprises, Inc. v. U.S. Trinity Energy Services, LLC*, et al., Westmoreland County Court of Common Pleas, No. 3068 of 2018).

Successfully represented a mid-Atlantic natural gas company in the defense of approximately \$20 million in claims asserted by a pipeline contractor in a private arbitration culminating in 10 days of hearings.

Secured a significant victory in the Commonwealth Court of Pennsylvania on behalf of Allan Myers, LP, a non-union construction company that filed a bid protest with the Pennsylvania Department of Transportation (PennDOT) challenging a provision in a project solicitation requiring that all contractors execute a Project Labor Agreement (PLA) with local unions, hire labor through local unions, and be bound by the unions' collective bargaining agreements. PennDOT dismissed the bid protest, and we successfully appealed that decision, with the Commonwealth Court unanimously holding that the PLA violated Pennsylvania's competitive bidding laws and setting a new standard for the use of PLAs. This was the first case in which a Pennsylvania court has not upheld a PLA. *Allan Myers, L.P. v. Pennsylvania Department of Transportation*, Commonwealth Court of Pennsylvania (*en banc*), No. 314 C.D. 2018.

Successfully represented a general contractor through project counseling, private arbitration, and settlement of claims arising from the construction of an approximately \$100 million residential tower in Philadelphia.

Successfully represented a general contractor in the prosecution, defense, and settlement of claims totaling more than \$22 million asserted among and between the owner, designers, contractor, subcontractors, sureties, and insurance carriers arising out of alleged construction defects, design deficiencies, and repair work on a \$60 million waste water treatment facility in Texas. *Pepper-Lawson Construction, LP v. March Construction, Inc.*, et al., 277th Judicial District of Williamson County, Texas, No. 15-0033-C277.

Successfully represented a development partnership in connection with one of the largest real estate deals in downtown Pittsburgh in 2020, transforming an iconic department store building into a premier Class A-plus, mixed-use facility. Assisted primarily with resolving more than \$6 million in mechanics' liens and claims filed by approximately 75 contractors and vendors relating to work performed or materials provided for the prior owner's redevelopment efforts.