



Denise M. Motta

Of Counsel

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Denise M. Motta has extensive experience litigating complex claims in state and federal courts. Her emphasis is on construction litigation and representation of parties on large construction projects, such as stadiums, buildings, and bridges. Denise provides advice to clients on contract negotiation and complex business disputes, including claims for non-payment, delay, and acceleration, and allegations of defective construction. Denise also represents owners, contractors, and subcontractors on a variety of construction issues ranging from construction contracts, collection of unpaid amounts, and OSHA violations to mechanic's liens, workers' compensation immunity disputes, and construction defect cases.

In addition to her work on behalf of clients, Denise is a mediator and arbitrator. She is a Panel Member with the American Arbitration Association (AAA), Construction and Commercial. In addition to construction and commercial cases, Denise's extensive litigation of personal injury, product liability, and other disputes provides parties with the benefit of more than 25 years of experience to assist with alternative dispute resolution options.

Denise's litigation background includes personal injury, premises liability, construction defect, insurance coverage, ERISA, employment, product liability, contractual disputes, and complex commercial disputes. She has significant experience in the coordination of litigation on the national and state levels, having represented companies on both fronts, and has been involved in several cases coordinated in multidistrict litigation.

Denise's extensive experience includes providing legal advice to clients directed to their business needs, as well as to achieve the best legal result. Her litigation skills often produce in positive results for clients prior to trial though attention to detail provided during the discovery phase to position cases for dispositive motions or settlement negotiations and mediation. Denise also has trial and arbitration experience with successful results for

Services

- Construction
- Insurance & Reinsurance Defense
- Product Liability, Prevention & Government Compliance
- Commercial Litigation
- Employment & Labor

her clients. Denise is a frequent presenter on construction law and other complex legal topics.

Education

- Salmon P. Chase College of Law, Northern Kentucky University (J.D., *magna cum laude*, 1996)
 - Order of Curia
 - Northern Kentucky Law Review
- University of Louisville (B.A. Political Science, *cum laude*, 1993)

Bar Admissions

- Kentucky
- Ohio

Court Admissions

- Supreme Court of the United States
- U.S. Court of Appeals, Sixth Circuit
- U.S. District Court, Western District of Kentucky
- U.S. District Court, Eastern District of Kentucky
- U.S. District Court, Southern District of Ohio
- U.S. District Court, Northern District of Ohio
- U.S. District Court, Southern District of Indiana
- U.S. District Court, Northern District of Texas

Professional Affiliations

- DRI Alternative Dispute Resolution Committee, Chair, 2025
- DRI Construction Law Committee, Steering Committee
- National Association of Women in Construction, Louisville/Southern Indiana Chapter

Awards & Honors

Selected for inclusion in Ohio Super Lawyers® Rising Stars™, 2007

Representative Matters

Successfully represented client on a multimillion-dollar stadium dispute involving changes to the unit rate arising from increased complexity in the design, and defended the client

against multimillion-dollar delay claims asserted by the contractor/joint venture.

Prevailed in arbitration on behalf of a steel fabricator against a sub-fabricator asserting more than \$1 million in "after the fact" claims raised after completion of the project.

Successfully briefed and argued a motion to compel arbitration and stay litigation in relation to claims filed by two bond claimants against a client's payment bond where there were questions as to whether claims asserted against the client and the surety were subject to contractual arbitration provisions. The court agreed with the argument that incorporation of the subcontract containing an arbitration provision into the bond subjected the bond claim to arbitration, even where the bond stated that legal action must be commenced in state or federal court.

Prevailed on a motion to dismiss pursuant to Federal Rule 12(b)(6) in obtaining dismissal of multiple counts alleged against client in a breach of contract case alleging in excess of \$450,000, which resulted in voluntary dismissal of case with prejudice without any payment by client.

Successfully advised a steel fabricator regarding strategy for negotiating with replacement general contractor and the owner following termination of the original general contractor, resulting in full payment to client of amounts due under the subcontract.

Defended client in arbitration where plaintiff was seeking approximately \$1 million; negotiated settlement on behalf of client in relation to paint dispute.

Obtained summary judgment on behalf of engineering firm in relation to alleged construction highway construction.

Represented structural steel fabricator and reached settlement in case involving default claim in a bridge construction case.

Represented client and negotiated settlement in employment/noncompete dispute.

Representation of client and successful resolution in discovery dispute arising from subpoenas issued in employment dispute.

Representation of subcontractor in relation to subpoena issued in relation to project, and challenged subpoena without production of documents by client.

Represented plumbing contractor in lien dispute and obtained full payment on client's behalf.

Represented city in relation to contract dispute and liens filed in relation to museum project and negotiated settlement of claims and dismissal of all claims against city.

Represented product manufacturer and negotiated settlement and dismissal of claims against client for minimal replacement cost.

Publications

November-December edition

DRI Features Motta Article on Successful Mediation Preparation

DRI's The Briefcase

Client Wins

Motta and Bokeno Prevail at Arbitration in High-Stakes Construction Defect Case

Denise Motta (Of Counsel-Louisville, KY) and Andrew-John Bokeno (Associate-Louisville, KY) obtained summary judgment and dismissal of Wilson Elser's client, a roofing and sheet metal company, in an arbitration arising from a construction defect claim. The property owner alleged that our client negligently installed and repaired the roof of three apartment buildings, resulting in leaks and a partial collapse of the parapet wall. The owner further alleged damages exceeding \$1.7 million. Denise and AJ argued that the owner's claims were barred by the 5-year statute of limitations and the economic loss doctrine. The arbitrator agreed and dismissed the owner's claims.

Motta and Gerkins Obtain Summary Judgment on Counterclaims in Case Involving Breach of Lease Agreement

Denise Motta (Of Counsel-Louisville, KY) and Sarah Gerkins (Associate-Nashville, TN) secured summary judgment in the First Circuit Court for Davidson County, Tennessee, on behalf of Wilson Elser's property holding company client. This highly contentious case involved a breach of the lease agreement and an eviction proceeding. Denise and Sarah moved for summary judgment on counterclaims asserted by the tenant-defendant, which included breach of the duty of good faith and fair dealing, breach of the implied duty of quiet enjoyment, estoppel, and unjust enrichment. After hearings that spanned three weeks, the court granted summary judgment, finding that the defendant-tenant "has not submitted evidence sufficient to create a general issue of material fact in relation to the elements necessary to prove its counterclaims."

Motta and Jones Prevail on Motion to Compel Arbitration in Mold Injury Lawsuit

Denise Motta (Of Counsel-Louisville, KY) and Samuel Jones (Associate-Louisville, KY) successfully obtained an order compelling arbitration and staying the case in Boone County Circuit Court, Kentucky, on behalf of Wilson Elser's home inspector client. The plaintiffs alleged personal injuries arising from exposure to mold in a residential property. In addition to suing our client, the plaintiffs brought claims against the realtor and other parties involved in the sale of the home, alleging they concealed the home's condition. The home inspection contract contained several provisions favorable to our client, including an exclusion for mold inspections, a significant limitation of liability, and a mandatory arbitration agreement. The court concurred that the claims against the home inspector were subject to arbitration and stayed the litigation as to our client.

Motta and Rose Secure Dismissal with Prejudice in Casino Negligence Case

Denise Motta (Of Counsel-Louisville) and Estee Rose (Associate-Louisville) obtained dismissal for Wilson Elser's property owner client in a negligence action arising from injuries allegedly caused by a drunk patron at a casino. The casino was operated by a separate corporate entity, which the plaintiff did not name in the lawsuit, instead suing our client. Denise and Estee moved to dismiss, arguing that the client was not a proper party and, therefore, the complaint failed to state a claim upon which relief could be granted. The court agreed and dismissed the claim with prejudice.

Motta and Jones Secure Preliminary Injunction, Halting Arbitration Against Engineering Client

Denise M. Motta (Of Counsel-Louisville) and Samuel E.T. Jones (Associate-Louisville) obtained a favorable decision from the United States District Court, Southern District of Indiana, granting a motion for preliminary injunction on behalf of their geotechnical engineering client. The client had provided geotechnical services for an interstate construction project that later became the subject of an arbitration proceeding. After being joined to the arbitration over objection, the client filed suit in federal court seeking a declaratory judgment that the claims asserted against it were not subject to arbitration. The court granted the preliminary injunction, finding that the dispute resolution clause in the upstream contract was not binding on the engineering client, nor did it delegate authority to the arbitrator to determine arbitrability. The court further concluded that the client was likely to succeed on the merits of the declaratory judgment action. As a result, the court enjoined and stayed the arbitration proceedings as to the geotechnical engineer. The court also denied a motion to dismiss based on forum non conveniens for the same reasons.