



— DOWNEY LENKOV MILSTEIN KUS —
FEARLESS ADVOCACY. RELENTLESS RESULTS.

Construction Law Newsletter

September 2026

Firm News

Downey & Lenkov Celebrates 25 Years and a New Chapter

For 25 years, Downey & Lenkov has been built on the dedication of an incredible team, strong client relationships, exceptional advocacy and an unwavering commitment to those we serve.

We celebrated this milestone in style at Rate Field, home of the Chicago White Sox, surrounded by the people who have helped make the past 25 years so meaningful.

As we look ahead to the future, we are proud to announce that Downey & Lenkov is now:

Downey Lenkov Milstein Kus

Our new name reflects our current leadership, while our commitment to providing exceptional legal counsel and client service remains stronger than ever.

Thank you to our clients, colleagues and friends for 25 years of trust and partnership. We are grateful to have you with us for this milestone and excited for what's ahead.

New name. Same trusted team. Same relentless advocacy.



2026 Best Lawyers

We are pleased to announce that several of our attorneys have been recognized in the 2027 editions of The Best Lawyers in America®, Best Lawyers: Ones to Watch® in America and the prestigious “Lawyer of the Year” awards.

Lawyer of the Year

Indiana

- [Kirsten Kaiser Kus](#) — Employers Workers' Compensation Law

The Best Lawyers in America®

Illinois

- [Michael Milstein](#) — Employers Workers' Compensation Law
- [Margery Newman](#) — Construction Litigation
- [Werner Sabo](#) — Construction Law and Construction Litigation

Indiana

- [Kirsten Kaiser Kus](#) — Insurance Litigation and Employers Workers' Compensation Law
- [Jennifer Meyer](#) — Employers Workers' Compensation Law

Best Lawyers: Ones to Watch® in America

Illinois

- [Tim Furman](#) — Employers Workers' Compensation Law

These recognitions reflect our attorneys' dedication to excellence and their commitment to delivering exceptional service to our clients. Please join us in congratulating our honorees on this well-deserved achievement!

Read the full press release [here](#).

Downey Lenkov Milstein Kus Attorneys Recognized in 2027 Best Lawyers® Editions

Lawyer of the Year

KIRSTEN KAISER KUS
Capital Member
Employers Workers' Compensation Law
INDIANA

The Best Lawyers in America®

MICHAEL MILSTEIN
Capital Member
Employers Workers' Compensation Law
ILLINOIS

KIRSTEN KAISER KUS
Capital Member
Insurance Litigation
INDIANA

JENNIFER MEYER
Income Member
Employers Workers' Compensation Law
INDIANA

MARGERY NEWMAN
Of Counsel
Construction Litigation
ILLINOIS

WERNER SABO
Of Counsel
Construction Law and Construction Litigation
ILLINOIS

Best Lawyers: Ones to Watch® in America

TIM FURMAN
Income Member
Employers Workers' Compensation Law
ILLINOIS

Best Lawyers

DLMK
— DOWNEY LENKOV MILSTEIN KUS —
ATTORNEYS AT LAW

Construction Seminar - So You Want to Build a Building: Modern Legal Pitfalls

Construction projects come with many moving parts. From contracts and compliance to the unexpected issues that can arise along the way, understanding the legal risks can help keep a project on solid ground.

Join us at our Chicago office on 10/21/26 for a practical, insightful seminar covering today's key legal issues impacting construction projects.

Register [here](#).

CONSTRUCTION SEMINAR

IN-PERSON EVENT

So You Want to Build a Building: Modern Legal Pitfalls

Join us for a practical, insightful session on the legal issues that can impact every construction project.

Wednesday
October 21, 2026

Schedule

Breakfast
8:30 - 9:00 AM CT

Presentation
9:00 - 11:00 AM CT

30 N. LaSalle Street
26th Floor
Chicago, IL 60602

DLMK
— DOWNEY LENKOV MILSTEIN KUS —
ATTORNEYS AT LAW

CLICK HERE TO RSVP →

Margery Newman Receives the ASA Chicago Lifetime Achievement Award



Of Counsel [Margery Newman](#) has been nominated to receive the ASA Chicago Lifetime Achievement Award.

The Lifetime Achievement Award is a prestigious recognition presented by the Association of Subcontractors & Affiliates (ASA) Chicago to a dedicated member who has demonstrated long-term, exceptional dedication and significant contributions to the Chicago construction subcontracting industry.

Learn more about [ASA Chicago](#).

Abigail Illovici Named Income Member



We are pleased to announce that [Abigail Illovici](#) has been named an Income Member!

Since joining the firm, Abby has consistently demonstrated dedication to our clients, exceptional legal ability, professionalism and a strong commitment to our collaborative firm culture. She frequently steps up to mentor and train new associates, while exhibiting a willingness to handle cases or projects both in her practice and her business development efforts.

Her detail-oriented approach, adaptability and strong advocacy skills have made her an invaluable asset to the firm and the clients she serves. This promotion reflects not only her hard work and vital contributions to our firm's continued growth but also our confidence in her future leadership within the firm.

Welcome to the Team

Please welcome our new Illinois Associate Attorneys [Jaylen Johnson](#), [Kevin Mouayed](#), [Derek Bushman](#), and [Dean Barakat](#), as well as our Indiana Associate Attorney [Austin Andreas](#).

They focus their practice on workers' compensation and general liability, representing employers, insurers and businesses with a strategic and efficient approach to litigation.



Legal Updates

Why Mediate?

By: [Samuel Levine](#)

Alternative Dispute Resolution is becoming more popular as a cost effective and efficient means of resolving construction disputes. Alternative dispute resolution consists of arbitration and mediation.

Arbitration is a formal procedure whereby a neutral third party renders an award after a formal hearing. The award may be ripened into a judgment.

Mediation is a process whereby the parties engage a neutral third person who assists them in negotiating a jointly acceptable resolution of a dispute. It is especially suitable for construction disputes based on their complexity and the expense of arbitration and litigation. Mediation is an inexpensive way to evaluate all parties' positions. It can be private and confidential.

The process commences with the agreement of the parties to mediate. The parties select a mediator. The mediator discusses the mediation with the attorneys for the parties. The parties provide submissions to the mediator. The mediator may speak to the parties individually prior to the formal mediation. At the formal mediation, the mediator engages with the parties and explores a variety of solutions. The mediator and parties document the agreement to be followed by a formal settlement agreement without the need for formal discovery such as depositions.

Mediation may occur at any time. The parties may agree to mediate before filing suit. They also may agree to mediate at any time during the process.

So why do you mediate? One author identifies the advantages of mediation as follows:

1. Encourages direct communication between the parties
2. Helps people decide for themselves
3. Allows for expression of emotion
4. Defuses anger
5. Explores creative means of solving problems
6. Preserves the strength of an ongoing relationship
7. Helps people accept the consequences of their decisions
8. Develops a model for resolution of future conflicts

Choosing the Mediator for Construction Cases

By: [Margery Newman](#)

You've Agreed to Mediate – Now What?

Once you have agreed to mediate a construction dispute, what's next. Perhaps the most important decision is choosing the mediator. This is a person who both sides agree upon.

Below is an overview of the characteristics of an exceptional mediator for a construction dispute.

Design Professional

For a design-related construction dispute, the best mediators have technical backgrounds. It is also helpful if the mediator understands contract forms such as the American Institute of Architects (AIA) design suite of documents. Look for mediators with liability and standard of care issues and design liability cases. There is also the ability to manage professional liability insurers.

Builder/Contractor

For a builder-related construction dispute, the best mediators have an in-depth understanding of how construction projects work.

The mediator should be familiar with:

- Project delivery systems
- Construction scheduling
- Delay analysis
- Cost overruns
- Change orders
- Construction defect and design liability issues

Most building construction mediations involve several parties, so a mediator needs the skills to handle complex negotiations, divergent interests and settlements among multiple parties.

Technical Knowledge/Trade specific

Credibility with the parties is perhaps the single most important aspect a mediator can bring to the construction mediation besides technical knowledge and industry standards. The mediator needs strong evaluation skills. The parties will expect the mediator to speak knowledgeably about risk exposure and provide an accurate neutral analysis of the strengths and weaknesses of each parties' position. Ultimately, persistence and patience are good qualities to look for with a construction mediator.

Tenacity

It is not unusual for the parties to reach an impasse during a mediation. Additionally, if there are several parties involved in the mediation, it can become long and drawn out. Look for a mediator who will start early, stay late and not "give up".

Temperament

A mediator who is too timid or overly aggressive is not a good fit for a construction mediation.

Authoritative

It is not uncommon when the parties have negotiated to an impasse for them to ask the mediator "What do you think?" If **all** parties agree, the mediator may make a recommendation for settlement.

Transformative

If the parties want to maintain their business relationship going forward, a mediator who is able to help the parties get beyond their anger would be a good fit. This is not often the case in construction mediations.

Neutrality

At all times, the mediator must be scrupulously neutral. The minute one party believes the mediator is favoring another party the mediation will not be successful.

It is also crucial to verify the mediator's reputation and credentials. Use the verified sources listed below to cross-check their qualifications.

Referrals

There are several mediation providers, namely the American Arbitration Association, JAMS, ADR Systems just to name a few, where you can obtain information about mediators. The Society of Illinois Construction Attorneys have several members who are experienced construction mediators.

CVs

Be sure to check the *curriculum vitae* of prospective mediators to determine their experience and style.

Certifications

Most, if not all, mediators participate in a 40-hour mediation program at a bare minimum. Check for further education and teaching experience.

To help navigate at mediation, provided below is a list of practical tips to ensure a smooth, productive and efficient process.

Streamline Complex Issues

Early interaction with negotiations will help navigate the disparate construction issues and guide the parties to an early exchange of information and documents.

Manage Expectations

When several parties are involved in a mediation, there may be long breaks while the mediator speaks to different parties. There should be an explanation that these delays do not signal mediator preferences.

Assess Strengths and Weaknesses of Claims

During the breakout sessions, a mediator's role is to provide the parties with a neutral, fact-based evaluation of each parties' position.

Early Intervention

Setting an early schedule to exchange claim information and defenses can help narrow the issues.

Joint Expert Testimony

"Hot Tubbing" is a method where experts with different opinions testify simultaneously. This allows the mediator to address questions about experts' opinions to all experts at the same time.

Insurance Dynamics

One of the biggest impediments to a successful construction mediation is the role insurance plays in any settlement. Insurance carriers are not in the business of paying out large settlements demand and frequently look for no liability at all. A successful mediator is one with extensive knowledge in insurance coverage issues.

If the Mediation Fails

By: [Warner Sabo](#)

If you have a dispute with your contractor and you used a standard American Institute of Architects (AIA) form contract, the dispute does not need to go to court; it can be resolved through Alternative Dispute Resolution (ADR). Many construction projects incorporate the AIA A201 General Conditions into the contract. That document includes provisions relating to dispute resolution, including mediation and arbitration. Here is the standard mediation clause:

The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

There are several good reasons to use mediation: it is quick and inexpensive; relationships can be salvaged; and it is private. However, not all mediations are successful. The parties may simply be too far apart, or there may be emotional issues. There are many other reasons that mediations fail. The next step is usually arbitration. The difference between mediation and arbitration is that mediation attempts to reach a voluntary settlement, while in arbitration, the arbitrator decides the outcome for you. Here is the standard arbitration clause:

If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

While the parties can negotiate changes to the standard language, this is rarely done for smaller projects. Once a demand for arbitration is filed, the AAA will send out a list of potential arbitrators to the parties. This list is taken from a panel of experienced arbitrators who have construction expertise (in the case of construction disputes). The parties can then review the

resumes of each of the proposed names and do any other due diligence before striking the names of panelists that they do not want. The AAA then compares the two lists and appoints a mutually acceptable arbitrator.

In large cases, there may be three arbitrators. There may also be additional parties that can be joined to the arbitration, such as subcontractors, who bear some responsibility for the dispute.

It must be noted that a party that has not agreed to arbitration cannot be compelled to arbitrate except in very unusual circumstances. Thus, the initial contract normally must contain an arbitration provision for this to apply. The alternative to arbitration, of course, is court. While arbitrators normally have substantial experience with the subject matter of a dispute, judges often do not. Court cases can drag out for years, possibly followed by additional years of appeals. Arbitration decisions are final and are extremely difficult to appeal. This makes arbitration a much faster and cheaper alternative.

Once the arbitrator is appointed, there will often be an initial conference call with the attorneys to discuss how the case is to proceed. There will be a discussion as to whether there will be a document exchange, the parties will be using experts and depositions will be required. Unlike court, where the discovery process can seemingly take forever, the arbitrator will keep a tight deadline on discovery and move the process along, thus saving the parties substantial money.

The parties will agree on dates for the actual hearing. This hearing is private, unlike court, so that only people directly involved in the matter will know facts about it. On the day of the hearing, you will arrive with your attorney and any witnesses. The Claimant (Plaintiff) will provide an opening statement followed by the other side. Sometimes the attorneys provide briefs to the arbitrator so that opening statements will not be necessary. The Claimant will present its witnesses, and just like in court, each witness will give direct testimony and be cross-examined by the opposing attorney. The process is usually less informal than in court and the arbitration will usually be scheduled for full days until all testimony is completed. On the other hand, the court will often handle other matters during the day, so that the case may only be given limited hours per day.

Once the testimony is finished, the attorneys may present closing arguments. Again, this may be dispensed with if the attorneys submit written briefs instead of oral arguments. The arbitrator will declare the hearing closed after everything is completed. Unless otherwise agreed, the arbitrator will issue an award within 30 days after the close of hearings. The award normally explains the arbitrator's ruling so that everyone involved understands the reasoning. Except in exceedingly rare circumstances, this will be the end of the matter. While the parties have the right to file an appeal, the odds of a successful appeal are so low that it rarely makes sense to even attempt one.

One criticism of arbitration is that the award may "split the baby." It can sometimes seem that way because construction cases often consist of many separate issues. The arbitrator may find in favor of one party on some issues and for the other party on the remaining issues. The award will be based on the evidence presented and not on emotions. That means that a party is well

advised to use an attorney experienced in arbitrations and familiar with construction issues.

The final step in this process is payment. Often, the losing party will send a check, and that will be the end of the matter. If that does not happen, the prevailing party will go to court to confirm the award and obtain a judgment. This is a quick process. The judgment can then be used to attach bank accounts, record liens or obtain any other relief available.

This is a very simplified overview of arbitration. Arbitration is especially well suited to construction disputes because the matter will be decided by a qualified professional rather than a judge who has hundreds of other cases to rule upon. A construction attorney should be consulted at the outset of a construction project to consider options for dispute resolution that can be written into the contract while the parties are still on good terms.

December 2025 Construction Newsletter

In our [December 2025 newsletter](#), we covered firm news, End of DEI Update, New Illinois Receivership, Wisconsin Court Bars Structural Defect Claim, Illinois Appellate Court Interprets Exclusive Remedy Provision and much more.

The newsletter cover features a festive winter background with snow and red berries. The title "Construction Law Newsletter" is in white on a dark blue banner, with "December 2025" below it. The Downey & Lenkov LLC logo is on the left. The content is organized into several sections: "Firm News" with a sub-header "Of Counsel Samuel Levine Appointed Vice Chair of the Construction Group of the ACREL" and a photo of Samuel Levine; "Season's Greetings" with a decorative card; "Welcome to the Team" with photos and bios of new attorneys; and "ISBA Webcast on The New Illinois Receivership Act" with a photo of Samuel Levine and registration information. The footer includes the date "December 2025", the website "WWW.DL-FIRM.COM", and a page number "2".

Downey & Lenkov LLC

Construction Law Newsletter
December 2025

Firm News

Of Counsel Samuel Levine Appointed Vice Chair of the Construction Group of the ACREL

Of Counsel [Samuel Levine](#) has been appointed Vice Chair of the Construction Group of the American College of Real Estate Lawyers (ACREL). ACREL is the preeminent association of commercial real estate lawyers. Membership is by nomination of ACREL Fellows and election by the membership. Learn more about [American College of Real Estate Lawyers](#).

Season's Greetings

Happy Holidays

As the year comes to a close, we would like to wish you a wonderful holiday season and a happy healthy new year. We are grateful for your continued confidence and trust in our firm and look forward to working together in 2025. In the spirit of giving, we've made contributions to the Greater Chicago Food Depository, FWRD Chicago, Hostages and Missing Families Forum, American Cancer Society and Union Autism Solutions.

Welcome to the Team

Please welcome our new Illinois Associate Attorneys [Zoe Arthurson-McCoy](#), [Jack J. Fritschler](#), [Nial Vender](#) and [Cassandra E. Halyo](#).

[Zoe](#) concentrates her practice in workers' compensation and general liability. She is a dedicated attorney who is committed to defending her clients' interests and has achieved favorable results through effective courtroom advocacy and strategic negotiation.

[Jack](#) concentrates his practice in workers' compensation and general liability. Before transitioning to defense work, Jack gained valuable experience clerking for a prominent Chicago plaintiff's personal injury firm, which provides unique insight into opposing strategies to advocate for his clients.

[Nial](#) concentrates his practice in workers' compensation and general liability. He is a dedicated attorney who is committed to representing employers, insurers and businesses in a wide range of litigation matters.

[Cassandra](#) concentrates her practice in workers' compensation and general liability. She is a dedicated attorney who is known for her strategic and detail-oriented approach. She works closely with employers, insurance carriers and third-party administrators to develop efficient and effective litigation strategies.

ISBA Webcast on The New Illinois Receivership Act

Of Counsel [Samuel Levine](#) will be moderating a webcast on the new Illinois Receivership Act, presented by the ISBA Construction Law Section, on 11/25/25 from 10:05 am to 12:05 pm. Attendees will receive 1.0 hour MCLE credit. Register here: [LIVE WEB - The New Illinois Receivership Act](#)

ILLINOIS STATE BAR ASSOCIATION™

December 2025 WWW.DL-FIRM.COM 2

Who We Are

Downey Lenkov Milstein Kus LLC is a full-service law firm with offices in Illinois and Indiana. Our expertise spans across several practice areas, providing transactional, regulatory and business solutions for clients across the nation. The firm's continued growth is a result of an aggressive, results-oriented approach. Unlike larger law firms however, we do not face massive overhead and are able to charge more reasonable rates that both small and larger employers can more readily afford.

We evolve with our clients, representing Fortune 500 and small companies alike in all types of disputes. Downey Lenkov Milstein Kus is a team of experienced, proactive and conscientious attorneys that have been named Best Lawyers®, Leading Lawyers, Super Lawyers®, Rising Stars and AV Preeminent®.

Newsletter Contributors

[Samuel Levine](#), [Margery Newman](#) and [Warner Sabo](#) contributed to this newsletter.

As always, the team at Downey Lenkov Milstein Kus is here to help. Whether you have questions, need guidance or are facing a complex challenge, our team is ready to assist.

View more information on our Construction Law practice

Our other practices Include:

- [Appellate Law](#)
- [Business Law](#)
- [Condominium Law](#)
- [Entertainment Law](#)
- [General Liability](#)
- [Healthcare Law](#)
- [Insurance Law](#)
- [Intellectual Property](#)
- [Labor & Employment Law](#)
- [Products Liability](#)
- [Professional Liability](#)
- [Real Estate](#)
- [Workers' Compensation](#)