

Benjamin E. "Ned" Nicholson, V

Partner

Columbia, SC
(803) 799-9800
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"I work to be my clients' 'go-to litigator.' To be that, I provide solutions by learning my clients' businesses and the challenges that they face. If the solution calls for litigation, I weigh the costs and benefits, advise my clients, and if necessary, fight for them in court."

Ned Nicholson has extensive first chair trial counsel experience in state and federal trial and appellate courts in a number of states. He concentrates his practice on complex business, construction litigation, insurance coverage litigation, and arbitration. He also tries to keep clients out of the courtroom by utilizing his experience as a former general counsel of a large outsourcing company to draft contracts and provide related legal advice. He has extensive experience in drafting and negotiating EPC agreements, design/build contracts, and construction contracts on behalf of manufacturers, businesses, developers, and public entities like counties, cities, and school districts. He has worked extensively with project development teams mid-project to prevent or mitigate loss when unexpected losses or disputes with the contractor or design professionals occur and threaten to derail the project.

Ned regularly represents clients in construction defect and compensation claims, manufacturer/dealer disputes, franchisor/franchisee disputes, unfair trade practice claims, intellectual property claims, contract disputes, and insurance coverage lawsuits. He has worked with clients in over a hundred mediations seeking settlement of claims out of court, and is a South Carolina certified mediator. He often advises clients on insurance coverage matters, particularly in the construction industry.

PARALEGAL/ASSISTANT

Paralegal

Melissa Oken
(803) 753-3335
moken@burr.com

Legal Practice Assistant

Valerie N. Hampton
(803) 753-3899
vhampton@burr.com

CAPABILITIES

Commercial Litigation
Manufacturing
Construction & Project Development
Procurement
Insurance Litigation & Coverage
Multifamily Housing

EDUCATION

J.D., University of South Carolina
School of Law
B.A., Wofford College
magna cum laude

LICENSED IN

South Carolina

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Experience

- Served as Lead Counsel for Public Utility defending \$300 million in claims arising from the abandonment of nuclear plant construction project.
- Obtained writ of mandamus court order that compelled the South Carolina Department of Revenue to release \$800 million in tax proceeds to a South Carolina county.
- Defended Fortune 500 company in multimillion dollar site condition claim involving a dispute with a contractor for the costs of the environmental restoration of one of the largest inland dredging projects in South Carolina history.
- Won \$1.7 million negligence and negligent misrepresentation jury verdict for highway contractor against insurance company in federal court in Charlotte, North Carolina. Verdict was the amount requested by contractor to jury. Used litigation presentation technology to organize and present complex case with 800 exhibits.
- Represented a Fortune 100 manufacturing company in a design and construction defect case against an engineering firm and construction company that designed and built manufacturing company's South Carolina plant. Forced multi-million dollar settlement from defendants during jury trial with an 80%+ damages recovery. Handled case solo against team of five lawyers representing defendants.
- Won jury verdict for business in trademark infringement action against competitor. Client was awarded attorney's fees and injunctive relief; total verdict was twenty times more than defendant's final offer to settle
- Successfully defended county in eight figure bid dispute, twice defeating contractor's motions for injunctive relief before the circuit and appellate court, and ultimately prevailing before procurement review panel.
- Obtained millions of dollars of recoveries for developers and owners from contractors and design professionals for construction defects in commercial projects
- Served as Counsel in national Fair Housing Act test case for developer and National Association of Home Builders against municipality; settled favorably for clients
- Served as Counsel for software manufacturer in arbitration of dispute between manufacturer and customer regarding product performance

ADMITTED IN

U.S. Court of Appeals for the Fourth Circuit

U.S. District Court - South Carolina

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- Favorably settled multi-million dollar claim of contractor for extra costs in a remediation project for decommissioning of Russian nuclear submarine
- Successfully defended county against claim by contractor building an airport extension by suing county's engineer for malpractice and obtaining cash settlement and indemnification against contractor's claims from engineer's insurance carrier
- Following litigation, obtained multi-million dollar settlement for hospital against both constructor of office building that flooded due to construction defects and separately against hospital's property insurance carrier for bad faith failure to pay lost revenues claim
- Construction contract counsel for South Carolina county; led negotiations for county and drafted novel construction and design program management contract for management of estimated billion-dollar construction program

Honors & Recognition

- Named, *Chambers USA*, Litigation: General Commercial (2023)
- Listed in *The Best Lawyers in America*® since 2011, Commercial Litigation since 2011, Construction Law since 2021, Litigation - Construction since 2011, Litigation - Intellectual Property since 2011
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- Listed in *The Best Lawyers in America*® "Lawyer of the Year", Litigation - Intellectual Property since 2011
- Awarded, Martindale-Hubbell AV Peer Review Rating
- Listed, *South Carolina Super Lawyers*, Construction Litigation (2020, 2022-2023); Business Litigation (2013-2018)
- Named, *Columbia Business Monthly* "Legal Elite", Construction Law (2019); Business Litigation (2020, 2023); Energy and Utilities Law (2019, 2021, 2023)

News

- Best Lawyers® 2024 Honors 242 Burr Attorneys, Including 17 "Lawyers of the Year"
Firm News, 08.17.2023
- Sixteen Burr Attorneys Across South Carolina Recognized in 2023 Legal Elite
Firm News, 08.01.2023
- 61 Burr & Forman Attorneys Ranked in 2023 Chambers USA
Firm News, 06.01.2023
- Seven Burr & Forman Attorneys Named 2023 South Carolina Super Lawyers and Rising Stars
Firm News, 04.28.2023
- Ten Burr & Forman Attorneys Named 2022 South Carolina Super Lawyers and Rising Stars
Firm News, 05.03.2022

Benjamin E. "Ned" Nicholson, V

Speaking Engagements

- South Carolina Bar Convention
Speaking Engagement, 01.17.2019

Articles

- Home Builders and Developers Beware: South Carolina Supreme Court Beats Up Hybrid Arbitration Clauses Mercilessly
Articles / Publications, 09.23.2022
- Supreme Court Opens Federal Courts to Takings Claims by Private Property Owners against State and Local Governments
Articles / Publications, 07.15.2019
- McNair Establishes Hurricane Matthew Legal Assistance Team
Articles / Publications, 10.27.2016

Civic Activities

- Past Chairman, South Carolina State Museum Foundation (2015-2017)
- Past President, Palmetto Trust for Historic Preservation (2011-2012)
- Past President, Rotary Club of Five Points (2001-2002)

Professional Activities

- Member, South Carolina Bar
- Chair, South Carolina Bar, Construction Law Section (2019-2020)
- Member, General Council of the Construction Law Section of the South Carolina Bar (2014-2022)
- Former Chair, Lawyer/Physician Relations Committee (1992-1999)
- Member, Legal Action Network for Development Strategies, National Association of Home Builders
- Member, American Bar Association ABA Construction Law Forum
- Member, Phi Beta Kappa