

Kimberly Ashby

Partner

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Orlando

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Kim Ashby is an experienced litigation attorney, representing developers, contractors, and governmental entities on a range of complex litigation matters, including lenders and special services in CMBS foreclosures and workouts. She is a partner in the firm's Appellate, Construction, and Business Litigation & Dispute Resolution Practice Groups.

Kim is Board Certified in Construction Law and Appellate Law by the Florida Bar and has handled more than 100 appeals in Florida's Court of Appeal.

Representative Experience

- Represented general contractor in a defective artificial turf claim against turf manufacturer/installer where 100% recovery was achieved. *T&G Constructors v. Shaw Industries, Ninth Judicial Circuit, Florida*
- Florida Supreme Court's decision that Chapter 558 Florida Statutes, addressing pre-suit construction defect resolution does not require parties to engage legal counsel unless the commercial general liability policy specifically requires it. *Altman v. Crum & Forester*, 232 8. 3d 273 (Fla. 2017).
- Florida Supreme Court 7-0 decision to affirm the 5th District Court of Appeal on all issues, including the legal holding that "in pari delicto" did not apply to negate the effect of section 489.128, Florida Statutes, which renders void any contract which is performed by an unlicensed contractor when a contracting license is required for the scope of work. *Earth Trades v. T&G Corporation*, 108 So. 3d 580 (Fla. 2013).
- Affirmation of the appointment of a receiver in a CMBS foreclosure based on the record which showed the value of the property did not exceed the debt; the property was cash flowing; and the borrower was dissipating revenue from the property during suit. *Reema Hospitality v. MSCI 2007-IQ13 Dike Road, LLC*, 135 So. 3d 374 (Fla. 5th DCA 2014).
- Represented Appellants on the appeal of judgments for lender liability predicated on alleged oral agreements with the principal of the borrower which resulted in reversal and remand for entry of judgement in favor of all Appellants. *Bankers Trust Co. v. Basciano*, 960 So. 2d 773 (Fla. 5th DCA

2007).

- Represented the Orlando-Orange County Expressway Authority as petitioner for a writ of common law certiorari to review an injunction against the use of all traffic infraction remedies as a result of the breach of the transponder agreements for all toll roads in Seminole County. *Orlando-Orange County Expressway Authority v. Baird*, So. 2d (Fla. 5th DCA 2008).
- Represented health care facility in appeal of judgment, predicated on administration of TPA therapy. *St Joseph's Hospital v. Cox*, 14 So. 3d 1124 (Fla. 2d DCA 2009).
- Represented Appellant on a \$2.5 million judgment rendered against client on lost profits issue, which resulted in reversal and remand in favor of client. *Network Publications v. Bjorkman*, 756 So. 2d 1028 (Fla. 5th DCA 2000).
- Represented developer in construction lien disputes, which resulted in petition denied in client's favor. *Wolf Creek Land Co. v. Masterpiece Homes, Inc.*, 942 So. 2d 995 (Fla. 5th DCA 2006).
- Represented RV manufacturer affirming judgement in favor of client in defect litigation. *Coberley v. ThorIndustries, Inc.*, 908 So. 2d 486 (Fla. 5th DCA 2005).
- Represented Respondent on review of conflict certiorari that addressed attorney's fee awards and surety bond claims. *Hubbel v. Aetna Casualty & Surety Co.* (Fla. 2000).
- Represented Appellee in the first conditional payment bond case, which resulted in client receiving full recovery on surety bond claim. *North American Specialty Insurance Co. v. Hughes Supply, Inc.*, 705 So. 2d 616 (Fla. 4th DCA 1998).
- Represented Appellant on review of non-compete clause for client, which resulted in reversal and remand in favor of client. *Lotenfoe v. Pahk*, 747 So. 2d 422 (Fla. 2d DCA 1999).
- Represented Appellant in review of construction conditional payment bond issue. *WMS Construction, Inc. v. Palm Springs Miles Assoc., Ltd*, 762 So. 2d 973 (Fla. 3d DCA 2000).
- Represented Orange County as client on tax exemption issue. *Trinity Temple Church of God in Christ v. Orange County*, 681 So. 2d 765 (Fla. 5th DCA 1996).
- Represented ground lessee tenant of Winter Park Mall on issue of capitalization caps under 99-year ground lease, which resulted in client's recovery of investment for all historical outparcel improvements. *Orlando Regional Center Assoc. v. Ivey Properties, Inc.*, 622 So. 2d 1094 (Fla. 5th DCA 1993).

Awards and Recognition

- Selected by her peers for inclusion in *The Best Lawyers in America*® in the fields of:
 - Appellate Practice (2006 – 2024)
 - Construction Law (2006 – 2024)
 - Litigation – Construction (2006 – 2016, 2018 – 2023)
- Named the Best Lawyers® “Lawyer of the Year” in Orlando in the fields of:
 - Construction Law (2011)
 - Appellate Practice (2016 and 2018)
- Ranked Tier 1 in Florida for Construction, *Chambers USA* (2004 – 2024)

- Listed for Construction by *Florida Trend's Legal Elite*® (2006 – 2012, 2016 – 2020)
- Listed as “Best Lawyers” in *Orlando Magazine* (2015 – 2022)
- Listed in Florida for Construction Litigation, Appellate and Business Litigation by *Super Lawyers*® (2006 – 2021)
- Listed in *Who's Who Legal* for Construction (2017, 2018)
- Listed in Florida as a “Top 50 Women Lawyer” by *Super Lawyers*® (2006, 2011 – 2016)
- Listed in Florida as one of the “Top 100 Lawyers” by *Super Lawyers*® (2013, 2016)
- Recommended for Real Estate & Construction – Construction by *The Legal 500* (2012, 2014)
- Awarded the Justice Harry Lee Anstead Award, The Florida Bar Board Certified Lawyer of the Year (2013)
- Listed for Appellate Practice by *Florida Trend's Legal Elite*® (2009 – 2011)
- Recommended for Construction by *The International Who's Who of Business Lawyers* (2006 – 2011)
- Awarded the Lifetime Achievement Award by The Florida Bar Construction Law Committee (2010)
- Recognized as “Top 5 Women In Construction Litigation” in *Orlando Business Journal* (1998)
- Recognized as one of the “40 Under 40” in *Orlando Business Journal* (1996)
- Peer review rated as AV in the Martindale-Hubbell® Peer Review Ratings™ system

Affiliations

Kim is, and has been, a member of the following organizations:

- Ninth Judicial Circuit Business Court Commission
- The Florida Bar
 - Construction Law Certification Review Course – chair (2009 – 2011)
 - Construction Certification Committee, past chair
 - Construction Law Committee, past vice chair
 - Appellate Practice Certification Committee, past chair
 - Appellate Rules Committee, past appointee
 - Appellate Court Rules, member
 - Trial Lawyers Executive Council (2018-2023)
 - Florida Bar Board of Legal Education & Specialization (BLSE)- past chair
- American Bar Association
 - Appellate Practice Committee, member
 - Subcommittee on Publications, chair
 - Construction Litigation Committee, co-chair
- American Inns of Court, Central Florida Chapter, founding barrister
- Central Florida Builders Exchange (CFBE), general counsel
- Central Florida Association for Women Lawyers, member

Community Involvement

Kim is an active Guardian Ad Litem appointed for dependent children in the Ninth Judicial Circuit. She has been a mentor for the Children's Home Society and is a past chair of Community Coordinated Care for Children, Inc. (4C). She is a past board member of Orlando Shakes and a past board member of the Orlando Opera. She also chairs the Winter Park Tree Preservation Board.

Presentations and Publications

Kim is a frequent lecturer and author on topics relating to appellate practice, construction and business litigation. Her selected lectures and publications include:

- Speaker, "Appellate Issues in Construction Cases," Florida Bar Construction Law Institute (March 11, 2022).
- Speaker, "Florida Appeals in Construction Cases: 2020 and Beyond," The Florida Bar Construction Law Committee (December 14, 2020).
- Co-author, "New Florida Receivership Statute Gives Commercial Mortgage Lenders Potential Leverage," *The National Law Review* (July 23, 2020).
- Author, "The Legal Implications of VR and AR Usage," *Construction Executive* (August 1, 2019).
- Speaker, "Construction Law Overview and Update: 558 Pre-Suit Notice," The Seminar Group (May 2019).
- Featured, "If you build it ... Kimberly Ashby just might be your attorney," *2017 Florida Super Lawyers* (June 2017).
- Speaker, "Proceedings Supplementary and Post-Judgment Issues" Florida Conference of Circuit Judges (August 4, 2015).
- Speaker, "Preservation of Error on Appeal," Florida Association of Counties 2015 Annual Conference & Educational Exposition (June 18, 2015).
- Author, "Prompt Pay in Florida," *Florida Bar Construction Certification Review Course* (2010).
- Speaker, "Florida Lien and Surety Law," Advanced Judicial Studies Conference for Florida Circuit Judges (2009).
- Author, "Construction Defect Digest," *Florida Bar Construction Law Institute* (2009).

Sectors

- [Energy](#)
- [Energy Transition](#)
- [Manufacturing](#)
- [Oil & Gas](#)
- [Renewables](#)
- [Smart Manufacturing](#)

Practice Areas



FOLEY & LARDNER LLP

- Appellate
- Business Litigation & Dispute Resolution
- Construction
- Litigation

Education

- University of Florida Levin College of Law (J.D., 1980)
 - Executive Editor, *University of Florida Law Review*
- University of Florida (B.A., high honors, 1978)
 - Political science

Admissions

- Florida
- Eleventh Circuit Court of Appeals
- U.S. District Court of Florida for the Middle, Northern, and Southern Districts, and Bankruptcy Courts