

# Keith Hayashi, V.P. Claims & Litigation

Keith Hayashi has served in various capacities for the Federal and State governments, as well as for the private sector. Mr. Hayashi graduated from the University of Hawaii at Manoa with a Bachelor of Science in Mechanical Engineering. Upon completion of college, he worked as a Nuclear Engineer at the Pearl Harbor Naval Shipyard. He obtained his J.D. from Santa Clara University where he served as an editor with the Santa Clara Law Review. After law school, he was admitted to the Hawaii Bar in 1995. He had the privilege of being a Hawaii Supreme Court law clerk for Associate Justice Mario R. Ramil from 1995 to 1996. Subsequently, he was an associate attorney with Matsui Chung Sumida & Chang where he practiced insurance defense and business related matters. Mr. Hayashi began working at HCA in 2003. He is a Vice President of Construction Claims and Litigation. He also served over three years as a Construction Manager for a \$150M repair and renovation project on the Island of Hawaii. Mr. Hayashi also serves as an arbitrator and has represented clients in mediation of various construction disputes. As an engineer at HCA, his duties have included insurance claim investigation, commercial and residential damage assessments, roof inspection, estimates for repair, estimates for the reasonable value of construction, estimates of the cost to complete, CPM scheduling and delay analysis. His proficiency lies in the evaluation, analysis, and development of claims as well as Requests for Equitable Adjustment on behalf of contractors and in defense of Owners. Mr. Hayashi has also facilitated "Partnering" sessions on behalf of contractor and government agencies. He has lectured at seminars for construction delay claims, claim avoidance and prevention, cumulative impact claims, construction damage calculations, and CPM schedule analysis. He is also is faculty / staff at Honolulu Community College where he teaches Construction Law to assist the Construction Management program.

## **AREAS OF EXPERIENCE**

- Government & Commercial Construction
- Construction Claims Management, Prevention & Resolution
- Construction Management
- Complex Litigation

## **EDUCATION**

- J.D., Santa Clara University School of Law (1994)
- B.S., Mechanical Engineering, University of Hawaii at Manoa (1991)

## **PROFESSIONAL ASSOCIATIONS**

- Hawai'i State Bar Association (1995 - present)
- General Contractors Association of Hawai'i (GCA Hawai'i)
- Honolulu Habitat for Humanity
- Construction Management Association of America (Hawai'i Chapter)
- American Society of Mechanical Engineers (ASME - Hawai'i Chapter)
- U.S. Green Building Council (Hawai'i Chapter)

## **CONSTRUCTION MANAGEMENT**

- Mauna Kea Beach Hotel \$150M Renovations & Repairs (CM)
- Hapuna Beach Prince Hotel \$8M Renovation & Repairs (CM)

## **PUBLICATIONS**

- Managing Claims In Construction Contracts (Co-Author)

## **LECTURER**

- Honolulu Community College (HCC) - Construction Law (2013 - Present)
- Hawai'i Claims Association - Construction Claims in Hawai'i (2015 Annual Meeting)

## **CONSTRUCTION CONSULTING SERVICES**

- Waste Management (2015 - 2013) – U.S. v. Justin Lottig, et al. – named as an expert in construction and construction sequencing in U.S. Federal District Court trial. Provided expert witness report, construction sequencing analysis, and construction delay analyses in Federal criminal indictment regarding alleged hazardous waste material discharge.
- Society Contracting, Inc. (2014) – prepared and successfully negotiated a \$650,000 Change Order with the State of Hawaii for cumulative impact claim including: delayed Notice To Proceed, building permits, lead-based paint, home office overhead, labor and material escalation costs. Prepared, reviewed and analyzed CPM schedule; maintained CPM schedule regarding delay damage claims; attended weekly OAC meetings.
- Index Builders, Inc. (2014) – prepared and successfully negotiated a \$350,000 Change Order with the State of Hawaii for constructive suspension, labor / material escalation, home office overhead costs, etc.
- Central Pacific Bank (2014) – prepared multi-disciplined engineering assessment of Island Pacific Academy facility in Kapolei. Engineering analysis of civil, structural, mechanical, electrical and plumbing systems at the facility. Provide findings and recommendations for repairs. Engineering assessment used as disclosure statement in sales transaction of building.
- Black v. Wong (2014) – prepared expert report regarding engineering investigation, analysis and calculation of costs of construction; fair market value of residence; prepared expert opinions re: workmanship, safety, difficulty of work, and reasonableness of labor.
- Bank of Hawaii (2014) – Retained as expert for repair and renovation of bank branch located in the Manoa Shopping Center. Investigated fire and water related damage. Coordinated and provided estimates for repair. Review of repair contractor's payment applications, invoices, and receipts. Documentation of damaged conditions with inventory of damaged items, surfaces, interior structures, security system, depository vault, furniture, and appliances. Review construction costs for reasonableness. Involved with negotiated settlement with insured.
- Fiddler Roofing adv. AOA O Kalamaku`u (2014) – Retained as roofing expert for subcontractor that installed roofing on single family and multi-family subdivision project. Perform site inspections and expert report.
- Kaapa v. AMS Staff Leasing (2014) – review of safety fall protection protocol and investigation of employee fall from three story building; provide expert opinions as to safety duties of contractors, employer, and employees involved in project; review OSHA guidelines and standards for fall protection.
- Laumilo Due Diligence (2013) – provided due diligence report for purchasers of \$2.5M residential lot. Research of building permits, federal, state, and county building code requirements. Review of land use ordinances for shoreline property. Investigate and coordinate hazardous materials investigation and abatement on property.
- Bagorio Residence (2013) – Inspect, evaluate and document fire related damage to residential structure in Kihei, Maui. Provide and coordinate repair estimate for repair / replacement cost of residence. Reviewed building permits, applicable building codes, state and county regulations.
- Harada Residence (2013) – Inspect, evaluate and document hail related damage to residential roofing system with composite fiber and concrete shingles. Review and evaluate contractor proposals for repair of roof. Inspect and evaluate solar panel system, skylights, and roof appurtenances for weather and/or hail related damage.
- Windward Church of the Nazarene (2013) – Retained as expert for investigation of hail related damage to worship hall, two story school building, and parishioner's residence. Inspect, document, inventory, and verify hail related damage to roofing systems for modified bitumen roofing. Review and evaluate repair estimate for roofing system provided by contractors.
- Zehngraff Residence (2013) – Retained as a roofing expert for insured to provide independent evaluation, assessment, and repair estimate for hail damage to roofing system, photovoltaic system, solar panels, and pool hot water system.
- Dey Family Subdivisions (2013) – Due diligence research and investigation for investment property. Prepared reserve study for infrastructure and utilities of private subdivision. Reviewed land use ordinances, building permit requirements, and other federal, state, and county regulations for residential development.
- Wai`ula`ula AOA (2013) – Retained by developer for investigation of defective construction claims. Investigation of Monier tile roofing system, building codes, manufacturer specifications, and adhesion of various marble and ceramic tiles installed throughout subdivision.
- Noh & Associates (2013) – Prepared Request for Equitable Adjustment (REA) claim for environmental contractor against the U.S. Coast Guard regarding various delays and additional costs related to hazardous material abatement of various government properties in the Marshall Islands.
- Maui Department of Water Supply (2012) – investigation and site inspection of six-stage deep well turbine pump; investigation of pump failure via cavitation or improper balancing; prepare expert report.
- Hanalei Bay Resort (2012) – retained by insurer to investigate fire extent and damage with apportionment of fire damage and scope of repair between claimants.

- Public Storage (2011) – provide expert report for motor vehicle accident case regarding parking lot design standards and safety precautions.
- Panda Express (2011) – provide oversight and observation of removal of ANSUL fire suppression system; document remediation effort after fire damage; expert witness services for engineering aspect of ANSUL system; document grease duct fire investigation and removal.
- Mauna Kea Beach Hotel (2006 – 2010) – construction management, litigation support, schedule review for \$50M insurance claim for earthquake repairs. Lead hotel's construction and engineering consultants and contractor in a design-assist delivery method for the repair and renovation of the hotel. Coordinated inspection with private adjusters and insurers' teams of construction experts. Worked with hotel owners and management for transition from construction to opening of hotel. Traveled to Japan for presentation and meetings with Seibu Board of Directors in Tokyo, Japan. Conducted weekly OAC meetings with construction teams (repair and renovation). Oversaw HCA team of construction consultants and inspectors to monitor and maintain progress of construction.
- Hapuna Beach Prince Hotel (2006 - 2010) – construction management and litigation support \$50M insurance claim for earthquake repairs. Similar duties as the Mauna Kea Beach Hotel (above).
- Wheeler Army Air Field (Building 400) (2009 - 2010) - assist general contractor with \$750,000 claim for additional work against Department of the Army, prepare detailed report with supporting documents for claim, entitlement, cost justification, and damages.
- Greenwood AOA (2011) – assist condominium association with review of drain line improvements requested by City and County of Honolulu, Building Inspection Division. Prepare report on building code compliance and notice of violation appeal process.
- Hickam Air Force Base Hanger (2010 - 2011) – review of insurance claim for flooding of air force hanger caused by negligence of subcontractor; evaluate claim by Air Force and assist with preparation of claim evaluation report.
- Waipahu Ash Landfill (2010 - 2011) – assist general contractor with claim against City and County of Honolulu for defective plans and specifications as well as permitting issues; prepare cost-loaded schedule.
- Honokaa Elementary School (2010) – assist general contractor with preparation of hazardous material change order; provide justification and accounting of additional costs.
- Pearl Harbor Naval Shipyard, Dry Docks #1, 2 & 3 (2010) – assist general contractor with claim for unforeseen conditions and hazardous materials at Pearl Harbor Naval Shipyard; prepare claim package; attend negotiations between NAVFAC and general contractor.
- Edades Residence (2010) – provide cost to repair estimate to counsel for newly purchased residence with shifting foundation and cracks in structural walls in Kalihi Valley.
- Makati Development Corporation (2010) – assist general contractor with \$113M project that encountered Unexploded Ordnances (UXO) at construction of US Embassy annex in Manila, Philippines. Assist in preparation of \$13 M claim package for unforeseen conditions.
- Escalator Improvements at Honolulu International Airport (Kone subcontract agreement) (2009) – advise general contractor on subcontract agreement with subcontractor; review and revise subcontract agreement.
- Kukui Gardens Roof Litigation (2009 - 2011) – assist with the development of expert report for cost to repair defective roof at Kukui Gardens Apartment Complex, litigation support, documentation of damages, and field water tests.
- Sapigao v. Queen's Medical Center (2008 - 2011) – assist with development of expert report on delay claims, loss of productivity and equitable adjustment at the Hawaii Kai Medical Building; issues included: delay of drawings, late owner-furnished materials, unreasonable withholding of approval, defective documents, interference by Architect / Owner's representatives, late payment, loss of productivity, compensation for extra work, delays and extended overhead, loss of bonding capacity, consequential financial damages, and interest.
- Wang Residence (2007) – retained by Owner for inspection and documentation of poor workmanship by general contractor at residence located in Lanikai, Hawaii. Prepare claims package for litigation for repair and replacement of defective work.
- Liang v. The Maryl Group (2007) – assist in the review and analysis of residential construction at the Sandlewood Development in Waimea, Hawaii. Residence located adjacent to stream; damaged by 100-year flood; prepare estimate for repair, review of flood map and hydrology report.
- AOA Honuakaha (2006 - 2008) – assist Home Owner's association with construction oversight and inspection of building leak repairs at Hawaii Community Development Authority (HCDA) facility located on Queen Street. Oversight of roof repairs; advise AOA President and committee on negotiations with State of Hawaii regarding scope of repairs.
- Prince Jonah Kuhio Federal Building (HVAC repairs and renovations) (2005 - 2006) – assist general contractor with preparation of schedules required by third-party review of schedules; work with general contractor to cost-load schedules required per specifications. Provide monthly updates included with payment requests.

- ASDS Training Facility Pearl City Peninsula (2006) – assist general contractor with change order / modification to contract based on reduced scope of work; original estimate based on “economy of volume” whereas reduced scope increased cost per square foot of construction.
- Kapolei Knolls Ladder Fall (2006) – assist in preparation of expert report regarding health and safety regulations regarding second-story fall of employee during installation of solar panels. Reviewed Federal (OSHA) & State (HOISH) safety regulations, Hawaii Revised Statutes, company safety manuals, manufacturer’s specifications for safety harness “tie-off” and ladder safety procedures.
- Dole Cannery Theater Roof (2006) – assist in preparation of roofing evaluation report; determine cause of leak and flooding in theater complex; prepare damage assessment; review repair costs incurred by theater.
- Kai Aloha Apartments (2006 - 2011) – provide estimate for repair and damage documentation for hotel situated adjacent to the Trump Tower in Waikiki. Hotel sustained earth movement, cracked walls and ceilings, and construction debris during demolition of previous building and construction of new hotel. Assist with settlement negotiations with developer.
- Primacio v. JA Jones Management (2005) – prepare report on construction safety and health regulations for Federal housing project. Occupational Safety and Health Administration (OSHA), Hawaii Occupational Safety and Health (HIOSH) regulations reviewed for accident claim involving trench excavation and cave-ins.
- Kobashikawa Residence (2005) – assist with the preparation of claim package for residence located adjacent to Likelike Highway drainage bank; shifting land on to home owner’s property; assist client and counsel with negotiations with State of Hawaii, Department of Transportation.
- Farrington Highway Drainage Improvements (2004) – prepare claim package for general contractor with loss of productivity due to defective documents and unforeseen conditions; assist in negotiations between State of Hawaii, Department of Transportation and general Contractor.
- Kalihi Valley Homes Site & Dwelling Improvements (2004) – claim preparation for general contractor in a request for equitable adjustment, additional compensation for extra work, delays and suspensions; advise general contractor’s management staff regarding claim strategy.

### **CONSTRUCTION PROJECTS**

- Mauna Kea Beach Hotel, (2007 – 2009) Construction Manager, \$100 M Earthquake Repair / Renovation, Kohala Coast, Hawaii, performed overall construction management services for the \$100,000,000.00 renovation and repair project at the Mauna Kea Beach Hotel. HCA assisted the owner/architect and contractor with a design-assist delivery package and value engineering of the project scope to meet the owner’s budgetary requirements and deadlines, including: Construction Support, Interpretation of Plans and Specifications, Construction Scheduling, Cost Control, Quality Control, Material & Equipment Control, Construction Changes & Claims, Damage Claims & Complaints, Record & Reporting, Project Completion & Inspection.
- Hapuna Beach Prince Hotel, (2007 - 2009) Construction Manager, \$8M Earthquake Repairs, performed overall construction management services for the \$7,600,000.00 repair project at the Hapuna Beach Prince Hotel. HCA’s leadership and coordination with contractor and owner provided a project that was completed 90 days ahead of schedule and on budget.
- Maluhia at Wailea Residence (2006 - 2008) – construction management and litigation support for construction of \$25M residence on Maui. Oversight of construction, review of payment applications, change order management; assist Owner’s counsel with lawsuit against developer; estimate “cost to complete” project.
- Board of Water Supply Farrington Highway, Parts II and III, (2005 - 2006) New Water Mains – field inspector; Installation of 5,229 linear feet of new 24-inch PVC and 6,174 linear feet of new 8-inch PVC along Farrington Highway between Jade Street and Kaulawaha Road. Provided Construction Management services. Project Cost: \$3,324,327. Part II: Installation of 5,834 linear feet of new 24-inch PVC and 5,199 linear feet of new 8-inch PVC along Farrington Highway between Hakimo Road and Haleakala Avenue. Provided Construction Management services. Project Cost: \$8,387,914.

### **FACULTY**

- Honolulu Community College (2013 - present) – CMGT-216 Construction Law and Contracts – instruct students on law as it pertains to construction for construction manager, superintendents and project managers. Course focuses on understanding the relationship between contract documents and the construction process. Students explore contractual relationships, legal roles and responsibilities, and contract types. General condition clauses that affect levels of decision making authority, project close-out, and the superintendent’s role as an agent of the contractor. Students study legal issues that often result in construction disputes including

differing site conditions, time and schedule impacts, change orders, and changed conditions. Students also study contract dispute resolution including negotiations, alternatives dispute resolutions, and civil litigation.

### **EDUCATIONAL SEMINARS**

- HCA Mini-seminars (2009) – Present half-day seminars: session #1 – Claims Development, Evaluation and Prevention; session #2 - Delay Analysis, Evaluation and Identification. Prepare presentation materials and PowerPoint presentation.
- In-House General Contractor Seminar (2007) – seminar presentation for general contractor’s management team. Lecture topics included: session #1 - The Law and Contracts, session #2 – Contract Changes and Modifications, session #3 – The CPM Schedule, session #4 – The Need for Documentation, and session #5 – The Request for Equitable Adjustment.
- NBI Seminar “Resolving Problems and Disputes on Construction Projects (2007) – panel of attorneys and a construction consultant lecturing on topics including: Managing Contract Changes, Tackling Contract Performance Delays, and Effectively resolving disputes; prepare presentation materials and present for 50+ attendees.
- NBI Seminar “Managing Complex Construction Law Issues in Hawaii” (2006) – prepare seminar material, handouts and PowerPoint presentation for NBI seminar; topics included: Troubleshooting Scheduling Issues and Partnering.
- HCA Seminar “Managing Claims in Construction Contracts” (2005) – prepare and review seminar manual; lecture on selected topics during eight (8) hour seminar with approximately 50+ attendees. Topics included: The Law and Contracts, Contract Changes & Modifications, The CPM schedule, Documentation, Request for Equitable Adjustment, Dispute Resolution, and case study.

### **PARTNERING WORKSHOPS**

- JPAC / Absher Partnering Workshop (2012) – Pearl Country Club. Lead and conducted partnering session with general contractor, U.S. Army Corps of Engineers, and design consultants; identify and discuss charter, mission and goals for the project. Develop joint dispute resolution process.
- ITSI Partnering Workshop Refresher (2010) – Hickam Air Force Base. Lead and conduct partnering session with general contractor, department of the Air Force its consultants and employees; identify and discuss problem project issues; develop resolution process to be implemented during construction.
- Preparation and selected presentation of partnering materials for the following Hawaii projects: NBC Schofield Barracks (2009), West Coast Construction - Hickam Road Reconstruction (2007), American Piping & Boiler (2006) and Alan Shintani, Inc. & Department of the Navy, Pearl Harbor Naval Shipyard (2005)