



## Surety

Hinshaw & Culbertson LLP has deep roots in the surety law field. Our attorneys have been practicing in the area since Hinshaw was founded in 1934, and since then we have built one of the strongest practices of its kind in the country.

We are well versed in matters involving:

- Appeals bonds
- Auto dealer policies
- Construction bid, performance and payment bonds
- Custodian bonds
- Custom bonds
- License and permit bonds
- Lost instrument bonds
- Mechanics' lien discharge bonds
- Probate bonds
- State, municipal and other public entity bonds
- Subdivision bonds
- Warehouse bonds
- Worker's compensation bonds
- Indemnity agreements
- Public officials bonds
- Reclamation bonds

Our attorneys' credentials underscore the firm's commitment to this area of law. In fact, many of our lawyers have more than 20 years of experience practicing surety law. Additionally, several of our senior partners have served as claims and management personnel for major carriers in the industry. The result of this experience and dedication to surety law is not only a group of highly skilled attorneys who can handle complex matters efficiently and from a business perspective, but also myriad satisfied clients who appreciate working with lawyers who understand their business needs.

Like a boutique law firm, Hinshaw has a tight knit group of attorneys who focus exclusively on surety law. We bring an intense focus to our work, which some large-firm attorneys may lack. At the same time, because of our national footprint, we have attorneys throughout the country who provide close support to our surety lawyers. This allows us to service our client's matter in any venue in which it may arise—from a small-town county court to the U.S. federal courts.

The breadth of our practice allows us to handle our clients' matters in whatever shape they take and whatever practice areas are involved, including banking, bankruptcy, workouts, construction, employment, secured transactions, environmental matters, securities, tax, workers' compensation, commercial

### Attorneys

Richard B. Polony

Joel T. Wiegert

### Related Services

Fidelity

### Related Industries

Construction

Insurance & Reinsurance



litigation, collections, professional liability and virtually any other practice area that might be involved in a surety matter.

We are not only savvy investigators, astute coverage analysts, and tenacious negotiators and litigators, but we are also leaders in the field. We are active members of important industry forums, bar associations and trade groups, including the National Bond Claims Association, the Surety Claims Institute and the National Association of Independent Sureties, and a number of local surety organizations throughout the country. Our attorneys frequently lecture before these respected organizations, and also serve as editors of and publish articles in various treatise and journals—most notably the American Bar Association's "Law of Performance Bonds," as well as *Construction Lawyer* and the "Payment Bond Manual."

When construction projects or other guaranteed transactions fall apart, Hinshaw's surety lawyers do not rush to take the matter to the courtroom. Rather, we work with our surety clients to take charge at early negotiations and workout meetings, fashioning cost-effective, real world solutions to the problems facing the principal, obligee and surety.

As leaders in managing the complex issues facing bonding companies, our surety lawyers counsel and defend sureties in negotiations, mediations, arbitrations and, when necessary, litigation in local, state and federal jurisdictions, including bankruptcy courts.

We are skilled in handling the various aspects of contract-bond claims and litigation:

- Conducting claim analysis, review, negotiations and documentation
- Analyzing options available to mitigate damages, including re-letting and contractor financing
- Negotiating and drafting takeover, security agreements, affirmative claims, liquidating agreements
- Collecting contract balances and pursuing claims under all types of commercial and miscellaneous surety bonds.

Our surety attorneys' skills extend beyond performance, payment, bid and release bonds in construction projects. We have dealt with all areas of surety law, including handling claims under appeals and custodian bonds to lost instrument and warehouse bonds. Supported by Hinshaw's national insurance services lawyers, professional liability attorneys and construction law specialists, among others, our surety attorneys regularly craft strategies to shift risks from our surety clients to others.

Our years of experience focused on surety law has resulted in an ability to untangle even the most difficult matters, often greatly reducing the financial impact of a claim by identifying and aggressively pursuing potentially liable parties. When presented with the opportunity, our surety attorneys will effect early remedies and spare our clients the high costs of discovery and pretrial litigation disputes. If a bankruptcy is involved, we have substantial experience there, protecting surety clients' interests as creditors. For instance, when a principal files for bankruptcy, we have the experience in taking immediate and necessary action in protecting a surety's right to contract funds and in mitigating damages in order to secure completion of the bonded projects during the bankruptcy.

When litigation cannot be avoided, our surety attorneys are savvy counselors and advocates for client's rights to contract balances, construction trust fund claims, and claims against architects, sub-contractors, owners and other professionals.

Before filing or responding to any lawsuit; however, our skilled attorneys almost always explore the use of creative and cost-effective alternative dispute resolution (ADR). We are experienced in using the latest ADR techniques and have been successful in resolving many disputes without protracted litigation.

Sometimes litigation is inevitable, and in those instances Hinshaw's experienced attorneys are well armed to handle the matter. Our trial attorneys regularly handle major surety cases before judges and juries, and we have successfully done so in some of the most hostile jurisdictions in the country.

Our approach is based on our insiders' perspective. We see the big picture and are well-versed in evaluating cases on the front end. We know the industry and have an intimate understanding of our clients' business and legal needs. Our aggressive motion practice is designed to resolve cases, if possible, at the pleadings stage. Furthermore, we offer time-tested discovery practices and state-of-the-art technology resources that allow us to manage massive cases with ease.



Finally, we pride ourselves on collaborating fully with our clients. We will not make any decisions without prior consultation with our client, a detailed litigation plan and budget.

Our work does not always end at the negotiated settlement or judgment stage. Our subrogation and indemnity work focuses on reclaiming all possible amounts for our client, whether through contractual indemnification rights, subrogation or intelligent salvage efforts. And our appellate team can turn a lower court setback into an appellate court victory, or on the flipside defend a favorable judgment from attack.

We have extensive experience in all areas of subrogation and other recovery litigation, including contract balance litigation, construction trust fund claims, and indemnification and exoneration claims. Our experienced appellate lawyers regularly appear in state and federal appeals courts throughout the country helping to establish important industry-favorable precedents.

In surety indemnity matters, we focus on maximizing client recovery of any amounts expended by accurately estimating all recoverables and helping clients limit the costs incurred in converting the property into cash. We also aggressively pursue indemnity claims against all institutions and individuals who have contributed to the underlying loss. For example, *Hanover Insurance Co. v. Smith*, which Hinshaw attorneys handled, has become recognized as one of the leading surety cases in Illinois because it upheld the right of a surety to recover attorneys' fees from the indemnitors. Although the trial court found that an appeal bond was a "nullity" because the bond principal did not obtain requisite court approval, the surety was still entitled to recover fees and costs sustained "as a consequence of the execution of the bond." Furthermore, our experienced indemnity attorneys have considerable experience in enforcing the collateral posting provision contained in indemnity. For example, in *Travelers Casualty and Surety Company v. Craig and Susan Ockerlund*, we defeated the indemnitors' objection that the court could not force the indemnitors to post collateral because to do so would amount to a prejudgment attachment.

## News

[Hinshaw Recognized as "Distinguished in Litigation" in BTI Consulting's Litigation Outlook 2024 Survey](#)  
November 16, 2023

[Terese Drew to Be Elected to American Board of Trial Advocates Board of Delegates](#)  
August 26, 2016

[Barry MacEntee Included in Chicago Lawyer's 2015 "40 Under 40"](#)  
October 20, 2015