

# Scott P. Pence

SHAREHOLDER

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## Overview

Scott Pence is a construction and real estate attorney whose practice focuses primarily on representing developers, owners, contractors, subcontractors, and design professionals in the preparation, negotiation, modification, and administration of all types of contracts and forms related to construction and development transactions. Scott's practice also includes reviewing and advising clients with respect to insurance and risk management issues.

Scott has been involved in many large, complex projects both in the state of Florida and across the country, including public-private partnerships (P3s), major stadiums, arenas, ballparks, airports, energy facilities, pipelines, hospitals, education facilities, hotels, casinos, and first responder training facilities. The types of contracts and forms with which he has extensive experience include development agreements; construction contracts; design agreements; consulting services agreements; design-build agreements; engineering, procurement, and construction (EPC) contracts; purchase and sale agreements; construction management agreements, both at-risk and not-at-risk; integrated project development agreements; requests for proposals; instructions to bidders; invitations to bid; and all of the various ancillary contract administration and project management forms such as change orders, waivers and releases of lien, payment affidavits, payment applications, claims of lien, and performance and payment bonds.

Scott is board certified by the Florida Bar in construction law. Scott is very active in the Florida Bar, where he is a past chair of both the Construction Law Committee and the Insurance and Surety Committee of the Real Property, Probate, and Trust Law Section. He is the creator and former editor in chief of *Insurance Matters!* a newsletter distributed by the Insurance and Surety Committee.

Scott speaks and writes frequently on various matters related to construction contracting and insurance/risk management issues. Topics include: insurance and risk management; specific standardized forms such as the various AIA, ConsensusDocs, and EJCDC forms; types of delivery systems such as design-bid-build, design-build, and construction management; and significant risk-shifting contract provisions such as indemnification obligations, insurance requirements, liquidated damages, consequential damages, delays (no-damage for delay and force majeure provisions), warranties, hazardous materials, changed/concealed conditions, payments, termination, and ownership of documents.

## Experience

Some of the projects Scott has been involved with include:

- **Energy Facilities**
  - Pipeline development and expansion projects in the state of Florida.
  - Photovoltaic system installation and service agreements, purchase and sale agreements with respect to various power substations and transmission lines.
  - EPC contracts for power plants.
- **Stadiums, Ballparks, and Arenas**
  - Arizona Cardinals
  - Florida Marlins
  - New York Giants
  - New York Jets
  - New York Mets
  - Tampa Ice Palace Arena
  - Washington Nationals
- **Schools**
  - Orange County Public Schools' Capital Expansion Program
  - Texas Independent School Districts, various schools
  - University of California, various campuses
  - University of Florida
  - University of New Mexico
  - University of South Florida
  - University of Texas, various campuses
  - Yale University

- **Airports and Transportation Facilities**
  - Hartsfield-Jackson Atlanta International Airport
  - Federal Express Hangars
  - Panama City-Bay County Airport Authority
- **First Responder Training Facility**
  - First-of-its-kind training facility at approximately \$35 million. Training facility used for first responders of natural disasters and terrorist acts.
- **Hospitals and Health Care Facilities**
- **Destination Resort Hotel Complexes and Casinos**
- **High-End Tower Condominiums and Apartment Complexes**

## Areas of Focus

### Practices

- Real Estate
- Construction
- Cannabis Law
- Construction Transactions
- Construction Litigation
- Development
- Institutional Investment and Finance
- Public-Private Partnerships
- Insurance

### Industries

- Real Estate
- Construction
- Insurance

## Insights

12.27.2021

Looking Forward to the Future of the Tampa Bay Region

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06.24.2020

Is the CARES Act Caring Enough?

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03.02.2020

Are You Protected Against the Risk of Construction Delays and Increased Construction Costs Due to COVID-19?

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06.19.2019

Hillsborough County Voters Pass Transportation Surtax – And Now It's June...

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01.24.2019

Risk Management and the Development / Construction Industry

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11.08.2018

Hillsborough County Voters Pass Transportation Surtax – What Happens Next?

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04.15.2014

Construction Subcontracting: A Comprehensive Practical and Legal Guide

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08.01.2013

Not All Additional Insured Endorsements Are Created Equal: Brief History of ISO's Additional Insured Endorsements and 2013 Changes

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09.01.2012

Construction Contracts Are Greener Thanks to the AIA SP Series

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04.01.2012

What You Need to Know About Certificates of Insurance

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11.07.2011

Changes to ACORD's Certificate Forms

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02.04.2008

Revisions to the 2007 AIA Contract Documents

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News

04.03.2024

Carlton Fields' Christopher Smart and Scott Pence Named Fellows of the American College of Real Estate Lawyers

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06.07.2017

Carlton Fields Attorneys Scott P. Pence and William P. Sklar Awarded Top Honors from The Florida Bar

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## Recognition

- Board Certified in Construction Law by The Florida Bar
- AV Rated by Martindale-Hubbell
- *The Best Lawyers in America*, Construction law, Real Estate Law (2024)
- Rising Star Award, The Florida Bar Construction Law Committee of the Real Property, Probate, and Trust Law Section (2016)
- Rising Star Award, The Florida Bar Real Property, Probate, and Trust Law Section (2016–2017)
- Leadership Tampa (2015)
- Florida Rising Stars, *Super Lawyers Magazine* (2013–2015)

## Professional & Community Involvement

- American College of Real Estate Lawyers
  - Fellow
- American Bar Association
  - Real Property, Trust, and Estate Law Section
    - Chair, Commercial Real Estate Transactions Group
    - Former Chair, Property, Casualty, and Other Non-Title Insurance Committee of the Commercial Real Estate Transactions Group
  - Forum on Construction Law

- The Florida Bar
  - Real Property, Probate, and Trust Law Section
    - Executive Council
    - Vice Chair, Construction Law Certification Review Course Committee
    - Former Chair, Construction Law Committee
    - Former Chair, Insurance and Surety Committee
- Hillsborough County Bar Association
  - Real Property, Probate, and Trust Law Section
  - Construction Law Section

## Speaking Engagements

- "Construction Issues," Attorney Banker Conference, The Florida Bar Real Property, Probate, and Trust Law Section (April 12, 2024)
- "AIA Form Documents," Construction Law Certification Review Course, The Florida Bar Real Property, Probate, and Trust Law Section (2017–2024)
- "Construction Contract Drafting Considerations," The Florida Bar Real Property, Probate, and Trust Law Section, Construction Law Committee (December 11, 2023)
- "Assembling an Insurance Program for Your Infrastructure and Other Large Construction Projects," The Legal Framework for Successful Infrastructure and Large Construction Projects 2023, Practising Law Institute (October 12, 2023)
- "Nuts & Bolts: Construction Contracts," Essentials for Real Estate Practitioners, ABA Real Property, Trust, and Estate Law Section (September 27, 2023)
- "What Transactional Lawyers Need to Know About Property Insurance," The Fund Assembly, Orlando, FL (May 18, 2023)
- "Practical Considerations Related to P3 Projects (Including a Discussion of Florida's P3 Legislation)," American College of Real Estate Lawyers, P3 Committee, (January 23, 2023)
- "Contract Drafting Considerations – Significant Risk Allocation Provisions Within Florida Construction Contracts," The Florida Bar Real Property, Probate, and Trust Law Section, Joint Meeting of the Construction Law Committee and the Insurance and Surety Committee (December 9, 2022)
- "Contract Drafting Considerations," 11th Annual Seminar on Construction Law in Florida, The Seminar Group (October, 2022; October 2021)
- "Considerations When Drafting Insurance Requirements – Traps for the Unwary," 6th Annual Insurance in the Construction Industry Seminar, The Seminar Group (August 26, 2022)
- "Construction Contracts," ABA Real Property, Trust, and Estate Law Section (July 6, 2022)

- "Risk Transfer – Contractual Indemnity and Additional Insured Issues in Construction," Annual Insurance in the Construction Industry Seminar, The Seminar Group (August, 2021; August 7, 2020)
- "Contract Provisions Related to COVID-19," 9th Annual Seminar on Construction Law in Florida, The Seminar Group (October 14, 2020)
- "Spotting Fake Insurance and Other Insurance Traps," Commercial Real Estate Series: Beyond the Basics, ABA Real Property, Trust, and Estate Law Section (June 10, 2020)
- "Risk Management and Insurance Topics Including Flood Insurance Issues," Third Annual Attorney Bankers Conference, The Florida Bar Real Property, Probate, and Trust Law Section (February 28, 2020)
- "Advanced Construction Contracts," Annual Seminar on Construction Law in Florida, The Seminar Group (October 24, 2019; October 4, 2018; October 19, 2017)
- "Avoiding Design and Construction Contract Pitfalls," AMAC Business Opportunity Summit: Business by the Bay (September 27, 2019)
- "Emerging Legal Issues in the Construction Industry," Emerging Issues Roundtable, Construction Financial Management Association, Tampa Bay Chapter (September 19, 2019)
- "Allocating Construction Liability Risk Among the Parties," Annual Insurance in the Construction Industry Seminar, The Seminar Group (August 14, 2019; August 17, 2018; May 12, 2017)
- "Real News About Fake Insurance," 31st Annual RPTE National CLE Conference, ABA Real Property, Trust, and Estate Law Section, Boston, MA (May 9, 2019)
- "Real News About Fake Construction Insurance," 12th Annual Construction Law Institute, The Florida Bar Real Property, Probate, and Trust Law Section (March 8, 2019)
- "Advanced Construction Law Issues: Delivery Systems and Allocating Risk in Contracts," Design-Build Legal Forum, Design-Build Institute of America (February 21, 2019; May 2, 2018; May 10, 2017)
- "Insurance Essentials for Real Property Deals," ABA Real Property, Trust, and Estate Law Section (June 13, 2018)
- "When Harvey Met Irma: Drafting Lease and Construction Provisions That Withstand Damage and Destruction," 30th Annual Spring Symposia, ABA Real Property, Trust, and Estate Law Section, Orlando, FL (May 11, 2018)
- "Significant Changes in the New 2017 AIA Contract Documents," 11th Annual Construction Law Institute, The Florida Bar Real Property, Probate, and Trust Law Section (March 9, 2018)
- "Don't Let a House Land on You: Indemnities and Third Party Insurance," ABA Forum on Construction Law Midwinter Meeting (January 18, 2018)
- "AIA 2017 Forms: New Insurance Requirements and Other Important Changes You Need to Know," Hillsborough County Bar Association Construction Law Section (November 9, 2017)
- "Significant Changes in the New 2017 AIA Contract Documents: Will You Know What to Tell Your Clients When They Ask?," ABA Real Property, Trust, and Estate Law Section (June 28, 2017)

- "Managing Risk Through Insurance – Issues Every Real Estate Lawyer Should Know," 29th Annual Spring Symposia, ABA Real Property, Trust, and Estate Law Section, Denver, CO (April 20, 2017)
- "Basic Insurance for Real Estate – and How to Require It in Your Documents," Building Blocks of Commercial Real Estate Series, ABA Real Property, Trust, and Estate Law Section (April 12, 2017)
- "A Manual for Those Who WRAP," 10th Annual Construction Law Institute, The Florida Bar Real Property, Probate, and Trust Law Section (March 17, 2017)
- "AIA Contracts: Understanding Warranties and Guarantees in the Standard AIA Contracts," Lorman Education Services, Tampa, FL (September 1, 2016; September 26, 2013; February 21, 2012; May 9, 2011; May 12, 2009)
- "The Insurance Is Coming! The Insurance Is Coming! Revolutionary Insurance Products for Your Real Estate Deal," 28th Annual Spring Symposia, ABA Real Property, Trust, and Estate Law Section, Boston, MA (May 12, 2016)
- "Legislation Modifying the Procedures for Construction Defect Claims Under Chapter 558, Florida Statutes, and New Legislation Relating to Residential Master Building Permit Programs," 35th Annual RPPTL Legislative and Case Law Update Seminar, The Florida Bar Real Property, Probate, and Trust Law Section (July 31, 2015)
- "Practice Points and Pitfalls in Contract Drafting to Avoid Coverage Issues," The Florida Bar Eighth Annual Construction Law Institute, Orlando, FL (March 13, 2015)
- "A Look Ahead to 2017 – What Types of Changes to Expect From AIA Based on the Recent Modifications to the AIA A141 Design-Build Agreement," Hillsborough County Bar Association Construction Law Section, Tampa, FL (February 19, 2015)
- "AIA Contracts," Lorman Education Services, Tampa, FL (October 22, 2014; October 6, 2011)
- "Insurance From the Other Guy: New ISO Forms for Additional Insured Endorsements," The Florida Bar Seventh Annual Construction Law Institute, Orlando, FL (March 22, 2014)
- "Insurance Issues for Construction Practitioners," BPI Construction Claims Monthly, Tampa, FL (February 28, 2013)
- "Delivery Systems: Understand the Potential Risks and Benefits Associated With Different Delivery Systems," WPL Publishing Co. (December 18, 2012)
- "Certificates of Insurance and Additional Insured Endorsement Forms," The Florida Bar Insurance and Surety Committee of the Real Property, Probate, and Trust Law Section (March 19, 2012)
- "Key Construction Contract Provisions: Understand the Potential Risks and Liabilities Involved in Construction Contracts," WPL Publishing Co. (September 2011)
- "Risky Business, What You Need to Know About the Standard AIA CM 'Not-at-Risk' Contracts If You Are an Owner or a Construction Manager," Construction Financial Management Association, Tampa Bay Chapter, Tampa, FL (2011)
- "What's in a Form? A Closer Look at the More Significant Provisions Within the AIA and ConsensusDocs Standard Construction Contract Forms," Construction Financial Management Association, Tampa Bay Chapter, Tampa, FL (September 23, 2010)



- "Overview and Comment Regarding Use of AIA and Consensus Documents," Hillsborough County Bar Association Construction Law Committee (February 18, 2010)
- "Practical Aspects of Green Construction," Construction Law Committee Meeting, Winter Park, FL (November 10, 2008)
- "Abbreviated Forms" and "Design-Build Forms," AIA Contracts Seminar, Lorman Education Services, Tampa, FL (May 13, 2009; May 13, 2008; April 18, 2007), Kissimmee, FL (May 14, 2008), and Orlando, FL (May 3, 2007)

## Pro Bono

- Various matters for the U.S. Green Building Council, Florida Gulf Coast Chapter Inc.
- Various matters for the Tampa Bay Conservancy Inc.
- Various matters for the Girl Scouts of West Central Florida Inc.

## Credentials

### Education

- William & Mary Law School (J.D., 2005)
  - *William and Mary Environmental Law and Policy Review*
- George Mason University (B.A., 1993)

### Bar Admissions

- Florida

### Industry Specialization

### Certifications

- Construction Law

## Background

- President and Founder, Penco Information Retrieval Inc., Springfield, VA (1992–2005)