

Thomas A. Lemmer

Partner



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Overview

Thomas A. Lemmer routinely counsels and litigates for clients on US federal contract formation, contract administration and dispute resolution. Tom also counsels clients on global procurement issues, with the assistance of Dentons' offices worldwide, including employment issues, how to do business in a given country, how to do business with the US government and risk assessments.

Tom practices in all areas of US federal government procurement. Tom has significant experience, and is recognized as a leading authority, in contract cost allowability, the Cost Accounting Standards (CAS), Truth in Negotiations Act (TINA) and business systems. In the areas of CAS, Tom has been involved in issues relating to: independent research and development (IR&D) and bid and proposal (B&P) issues and co-authored *IR&D B&P, Selling and Related Costs Under Federal Government Contracts - A Practical Guide*; compensation, particularly pensions, postretirement benefits and employee stock ownership plans; restructuring issues; asset valuations in the context of mergers and acquisitions; legal costs; and environmental cost recovery issues. Regarding business systems, Tom has been involved in responding to business system disapprovals and is a co-author of Dentons' *Government Contractor Business Systems Compliance Guide*.

Tom has been involved in the preparation of equitable adjustment and breach of contract claims. He has litigated claims and other general contract interpretation issues involving changes, contract interpretation, and breach of contract issues, including construction claims and Freedom of Information Act (FOIA) cases. Tom has litigated actions before the boards of contract appeals, the U.S. Court of Federal Claims, the Federal Circuit and federal district courts and courts of appeals and the Government Accountability Office. Tom also has been involved in due diligence reviews in support of corporate transactions.

Tom has participated in representing contractors regarding False Claims Act (FCA) investigations and litigations, including *qui tam* actions. Those investigations have involved the Department of Justice, local U.S. attorney's offices and various investigative services.

Before joining Dentons, Tom provided consulting services on government contract issues at a then "Big 8" accounting firm. He is a non-practicing CPA.

Experience

- Litigated the landmark case regarding the definition of allowable IR&D costs. See *ATK Thiokol, Inc. v. United States*, 68 Fed. Cl. 612 (2005), *aff'd* 598 F.3d 1329 (Fed. Cir. 2010).
- Litigated a Limitation of Funds issue regarding the recoverability of costs incurred above the cost ceiling. See *Parsons-UXB Joint Venture*, ASBCA No. 56481, 09-2 BCA 34, 305, 11-2 BCA 34, 680, 11-2 BCA 34, 919, 13-1 BCA 35,378 1 BCA 35,467
- Counseled and litigated various issues regarding contractor and government rights and obligations due to a segment closing or pension plan termination. *NI Indus., Inc.* ASBCA No. 34943, 92-1 BCA 24,631; *Viacom, Inc. v. United States*, 70 Fed. Cl. 649 (2006); *CBS Corp. v. United States*, 75 Fed. Cl. 498 (2007); *CBS Corp. v. United States*, No. 01-79C, 2009 WL 899702 (Fed. Cl. Mar. 31, 2009); *CBS Corp. v. United States*, 90 Fed. Cl. 456 (2009); *CBS Corp. v. United States*, 90 Fed. Cl. 466 (2009); [*AT&T Corp. and*] *Lucent Techs., Inc. v. United States*, 76 Fed. Cl. 297 (2007).
- Litigated CAS 415 issue involving the proper measurement of employee stock ownership plan (ESOP) costs. See *Ball Corp.*, ASBCA No. 49118, 00-1 BCA 30,864
- Counseled and litigated on behalf of a large service provider who has performed significant contracts in Middle East war zones, including subcontract formation and pricing, cost allowability under the prime contract and contract interpretation issues and actions before the US Court of Federal Claims and international arbitration forums.
- Represented a contractor performing a post-Katrina contract for FEMA in an FCA *qui tam* action.

Recognition

Tom has been recognized by *Chambers USA* since 2015 and he is recognized in *The Legal 500 USA*. He has been named a "Colorado Super Lawyer" by the publishers of *Law and Politics*. LexisNexis Martindale-Hubbell lists Tom as an AV Preeminent Rated Lawyer™. He is a recipient of the NCMA Fellow Award, which is reserved for individuals who have made significant contributions in the field of contracting and to the National Contract Management Association.

Insights

- Co-author, "IR&D, B&P, Selling and Related Costs Under Federal Government Contracts-A Practical Guide," *Dentons US LLP*, (Aug 2019)
- Co-author, "DOD Quietly Kills Another Controversial IR&D Rule", *Dentons Client Alert*, December 3, 2018
- Co-author, "DoD thresholds for cost and pricing data poised to increase to \$2M, reducing contractor risks of defective pricing and CAS liability," *Dentons Client Alert*, April 24, 2018
- Co-author, "DOD guidance pushes use of incentive contracts," *Dentons Client Alert*, April 19, 2016
- Co-author, "Speaking up about DOD's proposed Independent Research and Development costs rule, " *Dentons Client Alert*, April 12, 2016
- Co-author, "Information and Analysis on Legal Aspects of Procurement," (co-authored by Thomas Lemmer, Tyson Bareis and Steven Masiello), *The Government Contractor*, February 5, 2014
- Co-author, "CDA Statute of Limitations and Cost-Related Claims: Five Things Contractors Need to Know Now," (co-authored by Thomas Lemmer and Tyson Bareis), *Bloomberg BNA Federal Contracts Report*, June 25, 2013
- Co-author, "CDA Statute of Limitations and Cost-Related Claims: Five Key Impacts of Recent Developments," (co-author Tyson Bareis), *Bloomberg BNA Federal Contracts Report*, January 5, 2013
- "FEATURE COMMENT: A Brave New World Redux—Recent Developments On DCAA Access To Contractor

Internal," (co-author Tyson Bareis), *The Government Contractor*, October 10, 2012

- "DCAA Malpractice: Recovery of Damages," (co-authors Phil Seckman, and Joe Martinez), *Bloomberg BNA Federal Contracts Report*, May 15, 2012
- Co-author, "CAS Harmonization: This Game May Be Going Into Extra Innings," (co-author Tyson Bareis), *Bloomberg BNA Federal Contracts Report*, March 27, 2012
- "FEATURE COMMENT: A Brave New World - Managing DCAA Requests for Internal Audits," co-authored by Thomas Lemmer and Tyson Bareis, *The Government Contractor*, February 8, 2012
- "The End Of CAS-ERISA Harmonization?," co-authored by Thomas Lemmer and Tyson Bareis, *Law360* (January 9, 2012).
- Co-author, "*The Dentons Government Contractor Business Systems Compliance Guide*," (co-authors James Gallagher, Kevin Slattum and Steven Masiello), January 2012
- Co-author, "Maximizing Contractor Recovery of IR&D Costs: Federal Circuit Affirms ATK Thiokol," (co-authored by Phillip Seckman and Taylor Menlove), *Procurement Lawyer*, Summer 2010
- Co-author, "Federal Circuit Provides Needed Clarity On Proper Classification of IR&D Costs," (co-authored by Phillip Seckman), *Federal Contracts Report*, April 6, 2010
- Co-author, "Successful Recovery of Defense and Settlement Costs Following The Federal Circuit's Tecom Decision," (co-authors Taylor M. Menlove and Tyson J. Bareis), *Andrews Litigation Reporter*, Vol. 23, Issue 14, November 16, 2009
- Co-author, "The New Rules: What the Federal Circuit's Tecom II Decision Means for Contractor Litigation Strategy and Recovery of Legal Costs," (co-authors Taylor M. Menlove and Tyson J. Bareis), *The Procurement Lawyer Vol. 45, No. 1*, Fall 2009)
- Co-author, "ATK Thiokol Decision Creates a Rational Standard For Classifying Costs of R&D and Tangible Capital Assets," (co-authors Michael L. Bell and Steven M. Masiello), *Federal Contracts Report* Vol. 85 No. 3, January 2006
- Co-author, "SOX and Companies Selling to the Government, What Management, Directors, and Independent Auditors Should Know," (co -author William T. Keevan), October 2005
- Co-author, "Penalties for Unallowable Costs," (co-author Steven M. Masiello), *Federal Publications Briefing Papers* No. 99-6, 1999
- Co-author, "Pension & Postretirement Benefit Costs: Current Rules & Future Issues," (co -authors Kevin Dwyer and Mark J. Meagher), *Federal Publications Briefing Papers* No. 98-9, 1998
- Co-author, "The Allowability of Employment -Related Litigation Costs," (co -authors Thomas G. Jeter and Hugo Teufel III), *Government Contract Costs, Pricing & Accounting Report* Issue 96-6, June 1996
- Co-author, "Educating' Lawyers about the Implications of Cost Accounting Standards for *Government Contracts and Grants with Education Institutions*," (co -author Paul E. Pompeo), *The Journal of College and University Law* Vol. 21, No. 1, 1994
- Co-author, "Countering Plaintiffs' Lawyers: A Primer on *Qui Tam* Actions under the Civil False Claims Act," (co-author Thomas A. Lemmer and Hugo Teufel III), *Washington Legal Foundation Critical Legal Issues, Working Paper Series No. 52*, May 1993
- Co-author, "ESOPs & the Government's Continuing Attack on Compensation Costs," (co -author Michael J. Songer), *Government Contract Costs, Pricing & Accounting Report*, Issue 93-8, August 1993
- "Pension & Postretirement Benefit Costs: Recent Developments," (co -authors Janice Davis and Paul E.

Pompeo), *Federal Publications Briefing Papers* No. 92-6, 1992

- “Generally Accepted Accounting Principles & Government Contract Cost Accounting: A Survey of Theory & Practice,” (co -author Janice Davis), *Government Contract Costs, Pricing & Accounting Report* Issue 92-11, November 1992
- “Material Management & Accounting: Basic Principles and Guidelines,” *Federal Publications Briefing Papers* No. 88-6, 1988
- “Voluntary Disclosure: Basic Principles and Guidelines,” co -author Lane L. McVey, *Federal Publications Briefing Papers* No. 87-6, 1987

Activities and Affiliations

Memberships

- American Bar Association
- Colorado Bar Association
- District of Columbia Bar
- National Contract Management Association (Fellow)
- Virginia State Bar (Associate Member)

Areas of focus

Practices

- Litigation and Dispute Resolution
- White Collar and Government Investigations
- Government Contracts - US
- Bid Protests
- Claims and Terminations
- Commercial Products and Services
- Costs, Pricing, Business Systems and Appropriations Law
- Procurement Fraud Investigations and Defense
- Public Procurement
- State and Local Government Contracts
- Suspension and Debarment
- Government Contracts - US

Industry sectors

- Defense and Space

- Construction
- Health Care

Region

- Denver

Education

- T.C. Williams School of Law, University of Richmond, 1977, JD
- University of Virginia, 1973, BA

Admissions and qualifications

- Colorado
- District of Columbia
- Supreme Court of the United States
- US Court of Appeals for the Federal Circuit
- US Court of Federal Claims
- US District Court for the District of Colorado