



Kimberly A. Ashby

Partner

kaa@kirwinnorris.com

Phone: 407-740-6600

Fax: 407-740-6363

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.

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

Representative Experience

- Represented Master Association in a 13.5 million construction defect case and successfully negotiated recovery of 84% of the claim. *Plaza Tower Master Association, Inc. v. Kleman Plaza, LLP*
- 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 So. 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 contractor in review of construction conditional payment bond issues. *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 developed outparcel improvements. *Orlando Regional Center Assoc. v. Ivey Properties, Inc.*, 622 So. 2d 1094 (Fla. 5th DCA 1993).

Press Releases

06 June 2024 Press Releases

Foley Achieves Top Rankings in Chambers USA 2024

Foley & Lardner LLP is pleased to announce that it is again recognized by Chambers & Partners as one of the leading law firms in the country in the 2024 edition of Chambers USA, America's Leading Lawyers for Business.

17 August 2023 Honors and Awards

Foley Attorneys Recognized in 2024 Best Lawyers in America

Foley & Lardner LLP proudly announced today that 236 of the firm's attorneys across 20 U.S. offices have received recognition in the 2024 edition of The Best Lawyers in America©.

26 June 2023 Honors and Awards

Foley Attorneys Named to 2023 Florida Super Lawyers and Rising Stars Lists

Foley & Lardner LLP is pleased to announce that 17 of its attorneys were selected for inclusion in the 2023 Florida Super Lawyers and Rising Stars lists.

01 June 2023 Press Releases

Foley Earns Top Rankings in Chambers USA 2023

Foley & Lardner LLP is pleased to announce that it has again been recognized by Chambers & Partners as one of the top law firms in the country in the 2023 edition of Chambers USA, America's Leading Lawyers for Business.

18 August 2022 Press Releases

Foley Attorneys Recognized in 2023 Best Lawyers in America

Foley & Lardner LLP proudly announced that 250 of our attorneys across 20 offices have received recognition in the 2023 edition of The Best Lawyers in America.

01 July 2022 In the News

Foley Attorneys Named to Florida Trend's 2022 Legal Elite

Foley & Lardner LLP is proud to announce that 11 of its attorneys have been recognized in the 2022 edition of Florida Trend's Legal Elite.

24 June 2022 Honors and Awards

Foley Attorneys Named to 2022 Florida Super Lawyers and Rising Stars Lists

Foley & Lardner LLP is pleased to announce that 18 of its attorneys were selected for inclusion in the 2022 Florida Super Lawyers and Rising Stars lists.

01 June 2022 Press Releases

Foley Ranks Among Nation's Top Law Firms in Chambers USA 2022

Foley has again been recognized by Chambers & Partners as one of the top law firms in the 2022 edition of Chambers USA, America's Leading Lawyers for Business.

05 November 2021 In the News

Foley's Orlando Office Named 2021 Large Law Firm of the Year by Community Legal Services of Mid-Florida

Foley & Lardner LLP's Orlando office has been selected as Community Legal Services of Mid-Florida's (CLSMF) 2021 Large Law Firm of the Year.

19 August 2021 Press Releases

Foley Attorneys Recognized in 2022 Best Lawyers in America

Foley & Lardner LLP announced today that 236 of the firm's attorneys from 18 U.S. offices have been recognized in the 2022 edition of The Best Lawyers in America©, and 46 lawyers from 13 offices were included in the Best Lawyers: Ones to Watch list. Additionally, 14 of the firm's attorneys received the special designation of "Lawyer of the Year," an honor earned by only one lawyer in each practice area and metropolitan region.

24 June 2021 Press Releases

Foley Attorneys Named 2021 Florida Super Lawyers and Rising Stars

Foley & Lardner announced that 10 of its attorneys have been named 2021 Florida Super Lawyers. In addition, eight attorneys have been named 2021 Florida Rising Stars.

20 May 2021 Press Releases

Foley & Lardner Among Nation's Leading Law Firms Recognized in 2021 Chambers USA

Foley & Lardner LLP is pleased to announce that it has again been recognized by Chambers & Partners as one of the top law firms in the 2021 edition of Chambers USA, America's Leading Lawyers for Business.

20 August 2020 Press Releases

Foley Attorneys Recognized in The Best Lawyers in America 2021 List

Foley & Lardner LLP announced today that 20 of its attorneys earned Best Lawyers 2021 "Lawyer of the Year" recognition in their respective practice areas. In addition, 243 of the

firm's attorneys from 18 offices have been listed in The Best Lawyers in America 2021. Another 51 of the firm's attorneys from 14 offices have been named to the new category of Best Lawyers: Ones to Watch, which recognizes associates and other lawyers who are earlier in their careers for their outstanding professional excellence in private practice.

04 June 2020 Press Releases

Foley Attorneys Named 2020 Florida Super Lawyers and Rising Stars

Foley & Lardner LLP announced today that 11 of its attorneys have been named 2020 Florida Super Lawyers. In addition, eight attorneys have been named 2020 Florida Rising Stars.

23 April 2020 Press Releases

86 Foley Attorneys, 36 Practices Recognized as Industry Leaders by Chambers USA 2020

The 2020 edition of Chambers USA: America's Leading Lawyers for Business has recognized 87 Foley & Lardner LLP attorneys as leading lawyers in their fields. Among the attorneys named, 10 were ranked at the national level, and 13 were recognized for the first time.

25 October 2019 Press Releases

Ashby Receives Elizabeth Susan Khoury Guardian Ad Litem Award of Excellence

Partner Kim Ashby received an Elizabeth Susan Khoury Guardian Ad Litem Award of Excellence from the Legal Aid Society of the Orange County Bar Association for her outstanding work as a guardian ad litem (GAL), advocating for and working on behalf of neglected children.

15 August 2019 Press Releases

Foley Attorneys Recognized in The Best Lawyers in America 2020 List

Foley & Lardner LLP announced today that 20 attorneys earned Best Lawyers 2020 "Lawyer of the Year" recognition in their respective practice areas, receiving the top nod from Best Lawyers. In addition, 233 of its attorneys from 18 offices have been listed in The Best Lawyers in America 2020.

30 May 2019 Press Releases

Foley Attorneys Named 2019 Florida Super Lawyers and Rising Stars

Foley & Lardner LLP announced today that 15 attorneys have been named 2019 Florida Super Lawyers. In addition, six attorneys have been named 2019 Florida Rising Stars.

26 April 2019 Press Releases

84 Foley Attorneys, 32 Practices Recognized as Industry Leaders by Chambers USA 2019

The 2019 edition of Chambers USA: America's Leading Lawyers for Business has recognized 84 Foley & Lardner LLP attorneys as leading lawyers in their fields.

15 August 2018 Press Releases

Foley Attorneys Recognized In The Best Lawyers in America 2019 List

Foley announced today that 27 of its attorneys earned Best Lawyers 2019 "Lawyer of the Year" recognition in their respective practice areas. In addition, 242 of the firm's attorneys in 19 offices have been listed in The Best Lawyers in America 2019.

18 June 2018 Press Releases

Foley Attorneys Named 2018 Florida Super Lawyers and Rising Stars

Foley & Lardner LLP announced today that 18 attorneys have been named 2018 Florida Super Lawyers. In addition, seven attorneys have been named 2018 Florida Rising Stars.

31 May 2018 In the News

Ashby Discusses Current Commercial Real Estate Issues

Partner Kim Ashby was featured in a Commercial Property Executive Q&A, "CRE Challenges: A Look at Current Retail Issues."

03 May 2018 Press Releases

92 Foley Attorneys, 35 Practices Recognized as Industry Leaders by Chambers USA 2018

The 2018 edition of Chambers USA: America's Leading Lawyers for Business has recognized 90 Foley & Lardner LLP attorneys as leading lawyers in their fields.

18 September 2017 In the News

Ashby Discusses Historic Preservation in Orlando

Partner Kim Ashby was quoted in an [Orlando Sentinel](#) article, "Building Owners Weigh Preservation vs. Demolition," covering how preserving downtown Orlando buildings ignites nearby neighborhoods in addition to keeping the buildings' charm and character alive.

15 August 2017 Press Releases

Foley Attorneys Recognized in The Best Lawyers in America 2018 List

Foley announced today that 25 attorneys earned Best Lawyers® 2018 "Lawyer of the Year" recognition in their respective practice areas, receiving the top nod from Best Lawyers.

26 June 2017 In the News

Florida Super Lawyers Profiles Construction Attorney Kim Ashby

Partner Kim Ashby was recently profiled in a [Florida Super Lawyers](#) article titled, "If You Build It... Kim Ashby Just Might Be Your Attorney."

10 June 2017 Press Releases

Foley Attorneys Named 2017 Florida Super Lawyers and Rising Stars

Foley & Lardner LLP announced that 18 attorneys have been named 2017 Florida Super Lawyers. In addition, nine attorneys have been named 2017 Florida Rising Stars.

01 June 2017 Press Releases

The Legal 500 United States Recognizes 19 Foley Practice Areas

Foley has been recognized in 19 practice areas by The Legal 500 United States 2017, an analysis of law firms based on surveys and interviews of more than 250,000 corporate counsel. The firm maintained three top-tier recognitions and received 16 additional firm-wide recommendations.

28 September 2016 Press Releases

Experienced Construction Litigator Kim Ashby Joins Foley in Orlando

Foley & Lardner LLP announced today that Kim Ashby has joined the firm's Construction Litigation Practice as partner in the Orlando office.

Professional Experience

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 – 2024)
- 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 (2018-2024)
 - 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

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 City of 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:

- Co-Presenter- “Construction Law Case Update- The Past 12 Months”, Florida Bar Construction Law Institute (March 2023)
- 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).

Practice Areas

- Construction Litigation