

David J. Hatem

Partner, *Chair, Professional Practices Group*

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David Hatem is a Founding Partner of the Boston-based law firm, Donovan Hatem LLP. He leads the firm's Professional Practices Group, which represents engineers, architects and construction management professionals. David is nationally recognized for his expertise in law related to the design and construction industry. He is regularly called upon by this country's leading architect-engineering firms to provide procurement advice and to propose risk management strategies, and solutions, especially on major subsurface projects.

Throughout his career, David has dominated the representation of consulting engineers and construction managers, providing services to major Boston-area construction projects, including: the Massachusetts Water Resources Authority's Boston Harbor Cleanup Project, and its Metrowest Tunnel Project; the Massachusetts Highway Department's Route 3 Design-Build Project; the Massachusetts Bay Transit Authority's Greenbush Project; and, most prominently, the Massachusetts Transit Authority's Central Artery/Tunnel Project. In addition, David has been retained by professional liability insurers under Owner-Controlled Insurance Programs to represent engineering consultants and construction program management professionals on major underground projects throughout the United States, including New York City's East Side Access Project and Second Avenue Subway Project, L.A. Metro's Red Line and East Side Extension Projects, Seattle's Sound Transit Project, Milwaukee Metropolitan Sewage District's Deep Tunnel Project, Dallas' DART Light Rail Transit Project and Houston's Rapid Transit Project. David is presently providing risk management/insurance advice regarding a proposed professional liability OCIP Program for the Second Avenue Subway Project in New York.

David frequently lectures on issues of professional liability for design and construction management professionals, risk management and Design-Build procurement issues, and he has authored numerous related articles. He is a chapter contributor and Co-Editor of a new book, *Megaprojects: Challenges and Recommended Practices*, scheduled for publication in Summer 2010 by American Council of Engineering Companies. This publication will provide an objective, informed, and realistic study of the important issues which can be anticipated in the planning and successful delivery of megaprojects. He also teaches a course at Tufts University, "Legal Aspects of the Engineering Process."

Recent Honors & Awards

- 2008 American Council of Engineering Companies of Massachusetts Distinguished Service Award. ACEC/MA presents this award only in years in which a candidate distinguishes him or herself through the extraordinary support of the engineering profession.
- Recently selected by his peers, for the 6th year running, for inclusion in *The Best Lawyers in America*® 2009 in the fields of Construction Law and Professional Malpractice. *The Best Lawyers in America*® lists attorneys who have been selected through an exhaustive nationwide survey in which thousands of leading attorneys evaluate their professional peers. The 2009 edition of *Best Lawyers* is based on more than 2.4 million peer evaluations. *Best Lawyers* is considered the gold standard of reliability and integrity in lawyer rankings.

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Admitted To Bar

- Massachusetts
- United States District Court for the District of Massachusetts
- United States Court of Appeals, First Circuit
- United States Court Of Appeals, Seventh Circuit
- United States Claims Court

Business and Professional Associations

- American Bar Association
- Massachusetts Bar Association
- Professional Practice Committee, Boston Society of Architects, 1984
- Legal Counsel: American Council of Engineering Companies of Massachusetts, 1988-present
- General Counsel for Design Build Institute of New England, Inc., 2000-present
- American Society of Civil Engineers (Affiliated Member)
- Boston Society of Architects/AIA (Corporate Affiliate Member)
- Transportation Research Board (Organizational Affiliate Member)
- National Council for Public-Private Partnership (Corporate Member)
- International Bridge, Tunnel, and Turnpike Association (Associate Member)
- ASFE (Individual Consultant Member)
- New York Building Congress (Member)

Education

- Boston University (B.A., *magna cum laude*, 1974; J.D., 1977)
- Editor, Boston University Law Review, 1976

Articles and Publications

Chapter 4: Architect-Engineer Contracting, co-authored with David Corkum and Kenneth Walton, partners at Donovan Hatem LLP. Federal Government Construction Contracts, Editors: Adrian L. Bastianelli III, Andrew D. Ness, Joseph D. West, published by American Bar Association, 2010.

Green and Sustainable Design: Part 1: Professional Liability Risk and Insurability Issues for Design Professionals, April 2010.

RFIs and Shop Drawings: How to Manage Risk and Reduce Liability, co-authored with Peter Lenart, associate at Donovan Hatem LLP, STRUCTURE Magazine, March 2010.

Cost Estimates, Project Budgets and the Structural Engineer, co-authored with David Ponte, PE of DH Consulting Group LLC, STRUCTURE Magazine, January 2010.

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Managing Your Practice in a Down Economy, co-authored with Brian Newberry, partner at Donovan Hatem LLP, STRUCTURE Magazine, December 2009.

Structural Design Delegation, co-authored with Matthew Tuller, of counsel at Donovan Hatem LLP, STRUCTURE Magazine, November 2009.

Standard of Care and the Structural Engineer, co-authored with Eric Howard, partner at Donovan Hatem LLP, STRUCTURE Magazine, August 2009.

Contracts, co-authored with David Corkum, partner at Donovan Hatem LLP, STRUCTURE Magazine, July 2009

Managing Risks to Design Professionals in an Economic Downturn, co-authored with Daniel Poteet, associate at Donovan Hatem LLP, *ACEC/MA Insights*, June 2009

Roles and Responsibilities, co-authored with David Corkum, partner at Donovan Hatem LLP, STRUCTURE Magazine, March 2009

One of six tunneling industry experts who participated in a Tunnel Business Magazine roundtable discussion, *TBM Roundtable: Design-Build. Will One of the Oldest Construction Models Build Tomorrow's Tunnels?* Tunnel Business Magazine, August 2008

Steering Committee Member and Contributing Author, Introductory Chapter, a review of the recommendations made by the U.S. National Committee on Tunneling Technology in its 1974 report, *Better Contracting for Underground Construction*, and a summary of whether, and how, they have been adopted. Recommended Contract Practices for Underground Construction, Edited by William W. Edgerton, Published by Society for Mining, Metallurgy, and Exploration, 2008

Public-Private Partnerships: Opportunities and Risks for Engineers and Constructors Involved in Subsurface Projects, April 2008

Design Responsibility in Integrated Project Delivery: Looking Back and Moving Forward, January 2008

The Pendulum Begins to Swing Back: Recent Judicial Limitations on the Negligent Misrepresentation Exception to the Economic Loss and the Spearin Implied Warranty Doctrines, December 2007

Contributing Author, Chapter 4 *Design Professional Legal Responsibilities—Construction and Completion Phases*. Design Professional and Construction Manager Law, Editors: Stephen A. Hess, Jerome V. Bales, P. Douglas Folk, published by American Bar Association, 2007

Editor: Design-Build Subsurface Projects, Zeni House, 2002

Risk Allocation for Subsurface Conditions: Design-Build Projects, Proceedings of the North American Tunneling 2000, 2000

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Co-author: *In-House Attorney/Client and Work Product Privilege: Selected Issues*, The Construction Lawyer, Vol. 19, No. 4, October 1999

Removal of Subsurface Obstructions – An Alternative Contractual Approach, Geo-Engineering for Underground Facilities, 1999

Subsurface Conditions: Risk Management for Design and Construction Management Professionals, Wiley, January 1998

Geotechnical Baselines: Professional Liability Implications, Tunneling and Underground Space Technology, Vol. 13, No. 2, 1998

Differing Site Conditions: Liability Precautions for Design Professionals, Defense Counsel Journal, 1994

Administrative Regulatory and Registration Proceedings Involving Design Professionals, Construction Law Update, Wiley Law, 1991

Impact of Professional Practice Standards on Liability of Engineers, Volume V, Journal of Management in Engineering, 249, July 1989

Appealability of Transfer Orders in Controversies in Bankruptcy, 57 Boston University Law Review, 906, 1977.

Additional Information

- Reaching the height of professional excellence, David has received an AV Peer Review Rating from *Martindale-Hubbell*.
- Instructor, Legal Aspects of the Engineering Process, Tufts University, 1994 – present.