

**David J. Hatem**

Partner, *Chair, Professional Practices Group*

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**Experience**

David Hatem is a partner in the Boston-based law firm, Donovan Hatem LLP. Nationally recognized for his expertise in representing engineers, architects and construction management professionals, he leads the firm's Professional Practices Group which serves design and construction professionals. He is regularly called upon by this country's leading architect-engineering firms to provide 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 legal advice to design and construction management professionals on 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 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 projects throughout the United States, including:

- LaGuardia Airport Central Terminal Building Replacement;
- Maryland Purple Line;
- 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;
- Houston's Rapid Transit Project;
- Washington's Brightwater Tunnel System;
- Virginia's Midtown Tunnel; and
- Seattle's Alaskan Way Viaduct Project.

For over 20 years, David has taught Legal Aspects of the Engineering Process at Tufts University School of Engineering. He also teaches Legal Aspects of Civil Engineering at Northeastern University Graduate School of Engineering. He frequently lectures on issues of professional liability and risk management for design and construction management professionals, and he has authored numerous related articles. His most recent book, in which he was a contributing author and co-editor, is *Public-Private Partnerships and Design-Build: Opportunities and Risks for Consulting Engineers*, published in 2016. He is

also a chapter contributor and co-editor of both *Megaprojects: Challenges and Recommended Practices*, which was published in 2010 by the American Council of Engineering Companies, and the second edition of *Design-Build Subsurface Projects*, published in 2010 by the Society for Mining, Metallurgy, and Exploration.

### Admitted To Practice

- Massachusetts
- U.S. District Court for the District of Massachusetts
- U.S. Court of Appeals, First Circuit
- U.S. Court of Appeals, Seventh Circuit
- U.S. Claims Court

### Education

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

### 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 Partnerships (Corporate Member)
- International Bridge, Tunnel and Turnpike Association (Associate Member)
- Geoprofessional Business (Individual Consultant Member)
- New York Building Congress (Member)

### Honors & Awards

- 2016 recipient of the Engineering Center Education Trust (TECET) “Leadership in Professional Practice Legal Services” award. TECET presents this award in recognition of a career dedicated to the engineering sector.
- 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.
- Selected by his peers every year since 1990 for inclusion in *The Best Lawyers in America*® 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.
- Reaching the height of professional excellence, David has received an AV Peer Review Rating from *Martindale-Hubbell*

## Publications and Speaking Engagements

- Author, “Good Neighbor Design Practices: How Prudent Design Decision-Making Can Increase Project Success and Limit Professional Liability Exposure.” *Design & Construction Management Professional Reporter* (June 2017)
- Co-editor and contributing author, Chapter 11, “Risk Allocation and Professional Liability Issues for Consulting Engineers on P3 and Design-Build Projects.” *Public-Private Partnerships and Design-Build: Opportunities and Risks for Consulting Engineers*. American Council of Engineering Companies (2017)
- Author, “Diverse and Bifurcated Design Roles: Distinguishing Design Responsibility and Design Risk Allocation.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Dec. 2016)
- Speaker/Author, “Design Risk in Design-Build and Public-Private Partnerships: Collision Course with Professional Liability Insurance.” *Building Better Construction Contracts*, Practising Law Institute (Dec. 2016)
- Author, “A Tale of Two Cities: Retrospective and Prospective Views of the Big Dig and Megaproject Delivery.” *ACEC Insights* (fall 2016)
- Speaker, “Design-Build and P3s Contractual Risk Allocation Principles: New Terrain, Old Ground, or Both.” George A. Fox Conference (2016)
- Author, “Recent CM-At-Risk Massachusetts Supreme Judicial Court Decision – What Does It Mean for Project Participants?” *ACEC Insights* (summer/fall 2015)
- Author, “Public-Private Partnerships and Design-Build Subsurface Projects: Consulting Engineer Professional Liability Risk.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (April 2014)
- Author, “Design-Build and Public-Private Partnerships: Risk Allocation of Subsurface Conditions.” *Geo-Strata Magazine* (July/Aug 2014)
- Author, “Public-Private Partnership and Design-Build Subsurface Projects: Who is Actually Responsible for Design and Subsurface Conditions Risk? A Call for Guidelines.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Sept. 2014)
- Author, “Public-Private Partnerships (P3) and Design-Build (D-B): Who is Responsible for Risk?” *North American Tunneling Journal* (Oct. 2014)
- Co-editor and contributing author, “Chapter 8: Risk Allocation and Professional Liability Issues for Consulting Engineers on P3 Projects.” *Public-Private Partnerships: Opportunities and Risks for Consulting Engineers*. American Council of Engineering Companies (2013)
- Co-author, “The Structural Engineer’s Risk During the Construction Phase of a Project.” *STRUCTURE Magazine* (April 2011)
- Co-editor and contributing author, *Megaprojects: Challenges and Recommended Practices*. American Council of Engineering Companies (2010)
- Contributing author, “Architect-Engineer Contracting.” *Federal Government Construction Contracts*, American Bar Association (2010)
- Co-editor, *Design-Build Subsurface Projects* (1st and 2nd ed.). Society for Mining, Metallurgy and Exploration (2002, 2010)

- Co-author, “What’s a Structural Engineer to Do?” *STRUCTURE Magazine* (Aug. 2010)
- Author, “Green and Sustainable Design: Part 1: Professional Liability Risk and Insurability Issues for Design Professionals.” Donovan Hatem LLP White Paper (April 2010)
- Co-author, “Cost Estimates, Project Budgets and the Structural Engineer.” *STRUCTURE Magazine* (Jan. 2010)
- Co-author, “RFIs and Shop Drawings: How to Manage Risk and Reduce Liability.” *STRUCTURE Magazine* (March 2010)
- Author, “Project-Specific Insurance Advisory: Recent Problematic Trends in Project-Specific Professional Liability Insurance Programs.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Feb. 2010)
- Co-author, “Managing Your Practice in a Down Economy.” *STRUCTURE Magazine* (Dec. 2009)
- Author, “Megaproject Issues and Challenges: Some Informal Remarks.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Oct. 2009)
- Co-author, “Structural Design Delegation.” *STRUCTURE Magazine* (Nov. 2009)
- Co-author, “Standard of Care and the Structural Engineer.” *STRUCTURE Magazine* (Aug. 2009)
- Co-author, “Contracts.” *STRUCTURE Magazine* (July 2009)
- Co-author, “Roles and Responsibilities.” *STRUCTURE Magazine* (March 2009)
- Co-author, “Managing Risks to Design Professionals in an Economic Downturn.” *ACEC/MA Insights* (June 2009)
- Speaker, “Professional Liability Risk and Project-Specific Liability Insurance.” Donovan Hatem LLP Chartis Tunneling Projects Seminar, Boston/New York (Nov. 2009)
- Speaker, “Will One of the Oldest Construction Models Build Tomorrow’s Tunnels?” Tunnel Business Magazine Roundtable: Design-Build (Aug. 2008)
- Steering Committee Member and contributing author, “Better Contracting for Underground Construction.” *Recommended Contract Practices for Underground Construction*, Society for Mining, Metallurgy and Exploration (2008)
- Author, “Design Responsibility in Integrated Project Delivery: Looking Back and Moving Forward.” (Jan 2008)
- Author, “Public Owner Programs and Design Professional Accountability and Project-Specific Professional Liability Insurance: Functional Alignment.” Transportation Research Board (Jan. 2008)
- Author, “Public-Private Partnerships: Opportunities and Risks for Engineers and Constructors Involved in Subsurface Projects.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (April 2008)
- Author, “The Pendulum Begins to Swing Back: Recent Judicial Limitations on the Negligent Misrepresentation Exception to the Economic Loss and the *Spearin*

Implied Warranty Doctrines.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Jan. 2008)

- Contributing author, “Design Professional Legal Responsibilities – Construction and Completion Phases.” *Design Professional and Construction Manager Law*, American Bar Association (2007)
- Authored and presented, “Insurance Practice for Major Subsurface Projects: Help or Hindrance for Primary Project Participants.” AUA George Fox Conference, New York, NY (Jan. 2006)
- Co-authored and presented, “Project-Specific Professional Liability Insurance: Past, Present and Future.” Construction SuperConference, London, England (May 2006)
- Authored and presented, “Design-Build Risks and Professional Liability Insurance: A Disconnect.” IRMI Construction Risk Conference, Las Vegas, Nevada (Nov. 2005)
- Author, “Construction Reform Legislation: How Chapter 193 of the Acts of 2004 Impacts Design and Construction Management Professionals.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Nov. 2004)
- Author, “Court Refuses to Grant Construction Manager Sovereign Immunity from False Claims Act Exposure.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (July 2004)
- Author, “Developing Risk Indicators for Evaluating Professional Liability Exposure on Major Public Projects: A Broader Dimensional Approach.” *Design and Construction Management Professional Reporter*, Donovan Hatem LLP (Feb. 2004)
- Contributing author, “Risk Allocation for Subsurface Conditions: Design-Build Projects.” Proceedings of the North American Tunneling Conference (2000)
- Co-author, “In-House Attorney/Client and Work Product Privilege: Selected Issues.” *The Construction Lawyer*, Vol. 19, No. 4. (Oct. 1999)
- Contributing author, “Removal of Subsurface Obstructions – An Alternative Contractual Approach.” *Geo-engineering for Underground Facilities* (1999)
- Editor, *Subsurface Conditions: Risk Management for Design and Construction Management Professionals* (1998)
- Author, “Geotechnical Baselines: Professional Liability Implications.” *Tunneling and Underground Space Technology*, Vol. 13, No. 2. (1998)
- Author, “Errors/Omissions Cost Recovery Claims Against Design and Construction Management Professionals.” *CA/T Professional Liability Report*, Vol. 1, No. 4 (1996)
- Author, “Differing Site Conditions: Liability Precautions for Design Professionals.” *Defense Counsel Journal* (1994)
- Author, “Administrative Regulatory and Registration Proceedings Involving Design Professionals.” *Construction Law Update*, Wiley Law (1991)
- Author, “Impact of Professional Practice Standards on Liability of Engineers.” *Journal of Management in Engineering*, Vol. 5, No. 249. (July 1989)
- Author, “Appealability of Transfer Orders in Controversies in Bankruptcy.” *Boston University Law Review*, Vol. 57, No. 906. (1977)

**Additional Information**

- Instructor, “Legal Aspects of Civil Engineering,” Northeastern University, 2016 – Present
- Instructor, “Legal Aspects of the Engineering Process”, Tufts University, 1994 – Present
- Editor, Boston University Law Review, 1976-1977