



Patricia B. Gary
Of Counsel
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Experience

Patricia B. Gary is Of Counsel to the firm. She focuses her practice on the defense of malpractice cases against architects, engineers, attorneys and law firms, real estate brokers, insurance agents and other professionals. She also represents clients in business and commercial disputes, business torts, employment, and general liability matters.

She effectively utilizes her research and advocacy skills to resolve cases through summary judgment and motion practice.

Attorney Gary also specializes in rendering insurance coverage opinions. She represents insurers in complex insurance coverage matters and bad faith disputes involving a variety of policies, including commercial general liability, professional liability, errors and omissions, directors and officers, and first party property. She has successfully litigated numerous declaratory judgment actions to resolution in state and federal courts.

She has handled over forty appeals in a wide range of areas including professional malpractice, insurance coverage, construction law, breach of contract, intellectual property, trade secrets, unfair competition, False Claims Act, anti-trust, lender liability, bankruptcy, premises liability, products liability and land use.

Admitted to Practice

- Massachusetts
- New Hampshire
- United States District Court for the District of Massachusetts
- United States District Court for the District of New Hampshire
- United States Court of Appeals, First Circuit
- United States Court of Appeals, Second Circuit
- United States Supreme Court

Education

- Suffolk University Law School (J.D., *cum laude*)
 - Articles editor and staff member of the Suffolk University Law Review
 - Recipient of Best Brief Award, Moot Court Competition (Suffolk University Law School)
- Middlebury College (B.A., English/Fine Art)

Business and Professional Associations

- Massachusetts Bar Association
- New Hampshire Bar Association

Publications and Speaking Engagements

- Speaker/Panelist, "A Look Back at What's Ahead: A Review of 2017 and Recent Cases Impacting Design Professionals," Donovan Hatem's Design Professional Roundtable, Boston, MA, February 2018
- Speaker/Panelist, "Climate Change and Design: What do Owners want from their Design Professionals?" Donovan Hatem's Design Professional Roundtable, Boston, MA, January 2018
- Author, "Climate Change, Sustainability and Resiliency Considerations In Design: Professional Liability Risk Issues for Consulting Engineers," *ACEC Insights*, American Council of Engineering Companies, (Fall 2017).
- Author, "Massachusetts Appeals Court Affirms Dismissal of Complaint Against Design Professionals Based Upon the Three-Year Statute of Limitations." *Design & Construction Management Professional Reporter* (June 2017)
- Author, "Limitation of Liability Provision May Not Preclude Recovery Under Chapter 93A if Claim is Based Upon Fraudulent Conduct." *Design & Construction Professional Reporter* (March 2017)
- Co-editor and contributing author, Chapter 5, "The History of DB and P3 Project Delivery in the United States: Ethical and Public Interest Considerations." *Public-Private Partnerships and Design-Build: Opportunities and Risks for Consulting Engineers*. American Council of Engineering Companies (2017)
- Co-editor with David J. Hatem, *Public-Private Partnerships: Opportunities and Risks for Consulting Engineers*, published by American Council of Engineering Companies, (2014)
- Author, Chapter 6, "Ethical and Public Interest Considerations on P3 Projects," *Public-Private Partnerships: Opportunities and Risks for Consulting Engineers*, published by American Council of Engineering Companies, (2014)
- Author, "Ancient Doctrine Protects State Against Statutes of Limitation and Repose," *ACEC Insights*, American Council of Engineering Companies, (Fall 2013)
- Author, "Electronic Discovery: Following the Paperless Trail," Vol. 93, *Massachusetts Law Review*, 265. Sept (2010)

- Author, Chapter 13, “The Future of Megaprojects,” *Megaprojects: Challenges and Recommended Practices*, Editors: David J. Hatem and David Corkum, published by American Council of Engineering Companies, (2010)
- Contributing Author, Chapter 4, “Architect-Engineer Contracting,” *Federal Government Construction Contracting*, Editors: Adrian L. Bastianelli III, Andrew D. Ness, Joseph D. West, published by American Bar Association, (2010)

Representative Matters

- Obtained summary judgment for an engineering firm in a \$10 million subrogation lawsuit for property damage to a condominium complex, and recovered attorneys’ fees and defense costs under a contractual indemnification provision.
- Obtained summary judgment for structural engineer and a court order that owner of college parking facility breached its duty to defend the engineer under indemnification provision in the parties’ contract, and recovered attorneys’ fees and defense costs incurred by the engineer in underlying, multi-million dollar lawsuit for personal injuries.
- Obtained summary judgment in favor of insurance company in a declaratory judgment action, and an order rescinding all general liability and workers’ compensation insurance policies issued to the insured, on the grounds of material misrepresentations in the negotiation of the policies.
- Obtained summary judgment for a general contractor in an insurance coverage dispute, and a declaratory judgment that the insurer breached a duty to defend the general contractor against lawsuit alleging property damage and defective construction work. Also obtained an award of all attorney’s fees and costs incurred by the insured in defending against the declaratory judgment action brought by the insurer.
- Successfully briefed, argued, and obtained a reversal by the Appeals Court of a Superior Court decision dismissing engineer’s complaint for breach of contract and contractual indemnification.
- Obtained summary judgment in favor of two attorneys and a prominent Boston law firm in a legal malpractice lawsuit arising out of the law firm’s handling of a wrongful death suit (Summary judgment upheld following two appeals and a Rule 60(b) proceeding).
- Successfully briefed appeal and obtained decision by Appeals Court affirming summary judgment in favor of architect of a new high school against wrongful death claim by family of child killed by a motorist.
- Obtained summary judgment for a general contractor in a declaratory judgment action brought by its CGL insurer, and a ruling that the insurer must defend and indemnify the contractor through a trial and later, an appeal, against an owner’s claims for construction defects. Received award of all attorneys’ fees and costs incurred by the insured in defending against the declaratory judgment action.

- Successfully briefed and obtained decision by Appeals Court affirming summary judgment in favor of engineer of wastewater project on grounds that statute of limitations barred owner's claims for breach of express warranty and professional malpractice.
- Successfully defended firearms manufacturer against multiple federal lawsuits by a competitor alleging patent infringement, trade secret theft, fraud, and unfair competition.
- Successfully petitioned the Supreme Judicial Court for further appellate review of Appeals Court's decision, and obtained reversal, in part, and decision by SJC in wrongful death case arising from electrocution in which the hotel owner could not recover contractual indemnity against engineer, and electrical contractor could not recover common law indemnity against engineer.
- Following jury verdict, successfully defended firearms designer against post-trial motions, and subsequently, a Rule 60(b) motion for relief from judgment, and three separate appeals to the Appeals Court seeking to vacate the \$600,000 jury award and permanent injunction (Jury verdict and permanent injunction affirmed by Appeals Court and appellate attorneys' fees awarded. In separate appeal, denial of Rule 60(b) motion affirmed by Appeals Court).
- Successfully argued before the Appeals Court and obtained decision by Appeals Court reversing a final judgment against firearm manufacturer in a trade secret case and contempt action.
- Obtained summary judgment for architect and dismissal of a \$25 million lawsuit brought by the State of Connecticut against an architect and other design professionals and contractors who designed and built the University of Connecticut Law Library.
- Obtained summary judgment for a Massachusetts real estate agent and dismissal of a lawsuit arising out of a real estate transaction, in which the Buyer alleged that the listing real estate broker misrepresented the condition of the Seller's home.
- Obtained summary judgment in favor of engineer and dismissal of a multi-million dollar subrogation lawsuit alleging design and construction defects through defense that the suit was time-barred by the statute of repose.
- Successfully briefed and argued appeal on behalf of engineer before Second Circuit Court of Appeals, which affirmed dismissal of False Claims Act lawsuit. (Successfully opposed petition for *writ of certiorari* to the U.S. Supreme Court).
- Obtained dismissal of a *qui tam* lawsuit against a consulting engineer, and twenty-seven other defendants, arising out of the World Trade Center collapse on 9/11, where the plaintiff challenged the investigative findings of the National Institute of Standards and Technology.
- Successfully moved to dismiss a False Claims Act lawsuit brought against a consulting engineer and its sub-consultant, arising out of the World Trade Center collapse on 9/11, where the *qui tam* plaintiff challenged the investigative findings of the National Institute of Standards and Technology and alleged violations of the False Claims Act.

- Obtained summary judgment for an architect and construction manager, and dismissal of a multi-million dollar antitrust lawsuit brought by the developer of commercial waterfront property in Bridgeport, Connecticut, alleging violations of the Connecticut Antitrust Act and analogous provisions of the Sherman Act, and asserting that alleged conspiracy and corrupt practices adversely effected competition in restraint of trade. (Summary judgment affirmed by Connecticut Appellate Court).
- Obtained summary judgment for a general contractor and a declaratory judgment that an insurance company was obligated to defend and indemnify the general contractor against claims of property damage in an underlying lawsuit. Received an award of all attorneys' fees and costs that client incurred to bring the declaratory judgment action.
- Following removal to federal court, successfully moved to dismiss lawsuit against aviation insurance broker by a jet charter, maintenance, and repair company and its owner, which alleged that the broker failed to procure proper insurance for the jets and related facilities.
- Obtained dismissal of a lawsuit brought by a property owner against a design professional for damages caused by pile-driving activities at a construction project, by arguing that the Design Professional's contract limited its involvement in the project to developing the criteria and information in a Project Notification Form submitted to the Boston Redevelopment Authority.
- Obtained summary judgment for an architect and its engineer consultant, and dismissal of all claims brought against the design team by an electrical subcontractor on the Braintree-Weymouth Intermediate Pump Station and Headworks Wastewater Project, which sought additional compensation for electrical work, and challenged the Engineer's decisions for 15 claims. (Summary judgment affirmed by the Appeals Court and further appellate review denied by Supreme Judicial Court).

Reported Appellate Decisions

- *Certain Underwriters at Lloyd's, London v. Atlantic Constr. Servs., Inc.*, 92 Mass. App. Ct. 1123 (2018)
- *Jordan's Furniture, Inc. v. Carter & Burgess, Inc.*, 92 Mass. App. Ct. 1102 (2017)
- *Van Liew v. Kurland*, 91 Mass. App. Ct. 1120 (2017)
- *Powell v. Powell-Ferri*, 467 Mass. 651 (2017)
- *Diaz v. Ulen*, 91 Mass. App. Ct. 1108 (2017)
- *Merchants Insurance Group v. Spicer*, 88 Mass. App. Ct. 262 (2015)
- *Resto v. Delgado*, 86 Mass. App. Ct. 1117 (2014)
- *CBI Consulting, Inc. v. Trustees of Boston College*, 84 Mass. App. Ct. 1111, 2013 WL 5309753 (2013)
- *Seaver Electric, Inc. v. J.F. White Contracting Co, Inc.*, 84 Mass. App. Ct. 1105 (2013)
- *Massachusetts Housing Opportunities Corp. v. Whitman & Bingham Associates, P.C.*, 83 Mass. App. Ct. 325 (2013)

- *State of Connecticut v. Lombardo Bros. Mason Contractors, Inc.*, 307 Conn. 412, 54 A.3d 1005 (2012)
- *LeBlanc v. Logan Hilton Joint Venture*, 78 Mass. App. Ct. 699 (2011), affirmed in part, reversed in part, *LeBlanc v. Logan Hilton Joint Ventures*, 463 Mass. 316 (2012)
- *Troy Industries, Inc. v. Samson Mfg. Corp. (No. 1)*, 81 Mass. App. Ct. 1122 (2012), review denied, 962 Mass. 1108 (2012)
- *Troy Industries, Inc. v. Samson Mfg. Corp. (No. 2)*, 81 Mass. App. Ct. 1123, 963 N.E.2d 777 (2012)
- *Troy Industries, Inc. v. Samson Mfg. Corp. (No. 3)*, 81 Mass. App. Ct. 1124 (2012)
- *Arcadd, Inc. v. Patterson*, 80 Mass. App. Ct. 1111 (2011), rev. denied, 461 Mass. 1103 (2011)
- *LeBlanc v. Logan Hilton Joint Venture*, 78 Mass. App. Ct. 699 (2011), rev. granted, 460 Mass. 1101 (2011)
- *Otto v. Melman*, 80 A.D.3d 738, 915 N.Y.S.2d 503 (N.Y.A.D. 2 Dept. 2011), leave to appeal denied, 7 N.Y.3d 703, 953 N.E.2d 1088 (2011)
- *Wood ex rel. U.S. v. Applied Research Associates, Inc.*, 328 Fed. Appx. 744, 2009 WL 2143829 (2d Cir. 2009), cert. denied, *Wood v. Applied Research, Inc.*, 130 S.Ct. 1285, 175 L.E.2d 1105 (2010)
- *Troy Industries, Inc. v. Samson Mfg. Corp.*, 76 Mass. App. Ct. 575 (2010)
- *Clerger v. Commerce Ins. Co.*, 46 Mass. App. Ct. 1123, 702 N.E.2d 820 (1998), rev. denied, 707 N.E.2d 1079 (1999)
- *Fordham v. Business Equip. Corp.*, 40 Mass. App. Ct. 1123, rev. denied, 423 Mass. 1106 (1996)
- *O'Brien v. Christensen*, 422 Mass. 281 (1996)
- *Cheschi v. Boston Edison Co.*, 39 Mass. App. Ct. 133 (1995), rev. denied, 421 Mass. 1102(1995)
- *Resendes v. Boston Edison Co.*, 38 Mass. App. Ct. 244, 648 N.E.2d 757 (1995), rev. denied, 420 Mass. 1105, 651 N.E.2d 410 (1995)
- *Backman v. Lilly*, 38 Mass. App. Ct. 1104 (1995)
- *Palhares v. Ritz Carlton Hotel*, 36 Mass. App. Ct. 1101 (1994)
- *Hartford Cas. Ins. Co. v. New Hampshire Ins. Co.*, 417 Mass. 115 (1994)
- *Jillian's Billiard Club of America, Inc. v. Beloff Billiards, Inc.*, 35 Mass. App. Ct. 372 (1993) rev. denied, 416 Mass. 1108 (1993)
- *Flood v. Southland Corp.*, 416 Mass. 62 (1993)
- *Remco Distributors, Inc. v. Oreck Corp.*, 981 F.2d 1245 (1st Cir. 1992)
- *Garside v. Osco Drug, Inc.*, 976 F.2d 77 (1st Cir. 1992)
- *Sure-Snap Corp. v. State Street Bank & Trust Co.*, 948 F.2d 869 (2d Cir. 1991)

Additional Information

- Law Clerk to Chief Justice David A. Brock, New Hampshire Supreme Court