

Martin Schwartzberg

Shareholder

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Martin is a member of the Casualty Department where he handles construction accident cases involving New York Labor Law and Industrial Code. Martin has over twenty-five years of experience in handling Labor Law litigation, having represented owners, contractors, architects and engineers in defense of these types of claims. Additionally, he represents owners, architects, engineers and elevator maintenance companies in cases involving alleged elevator malfunctions due to claimed issues with the design, installation and maintenance of the elevators in question. Additionally, his experience includes handling insurance fraud and Special Investigations Unit (SIU) matters involving the investigation, evaluation, and defense of suspected fraudulent claims.

An experienced litigator who has handled cases from inception through trial, Martin has counseled and defended architects, engineers, landscape architects, land surveyors and construction firms in claims and lawsuits brought against them for professional malpractice, breach of contract, construction delays, construction defects, personal injury and property damage. He has also defended design professionals in disciplinary actions brought by governmental authorities.

In addition to his significant experience in the defense of design and building professionals, Martin has also represented and defended other entities such as municipalities and property owners in premises liability matters. He has handled several personal injury mold exposure cases representing a professional engineering firm that was brought to the premises to perform mold testing. Martin shares his broad knowledge of risk and liability in numerous lectures and presentations he has made to various groups of design and construction professionals.

Martin attended the State University of New York at Binghamton and received his Bachelor of Arts in Political Science in 1986. He then went on to earn his *juris doctor* from Hofstra University School of Law in 1989. He is a member of the New York State Bar Association and is admitted to practice in New York and Connecticut, and before the

Practices

- New York Construction & Labor Law
- Construction Injury Litigation
- Architectural, Engineering & Construction Defect Litigation
- General Liability
- Premises & Retail Liability
- Miscellaneous Professional Liability
- Insurance Agents & Brokers Liability
- Lawyers' Professional Liability
- Catastrophic Claims Litigation
- Product Liability
- Environmental & Toxic Tort Litigation
- Fraud/Special Investigation

United States District Courts for both the Southern and Eastern Districts of New York.

Education

- Maurice A. Deane School of Law at Hofstra University (J.D., 1989)
- State University of New York at Binghamton (B.A., 1986)

Admissions

- Connecticut, 1989
- New York, 1989
- U.S. District Court Eastern District of New York
- U.S. District Court Southern District of New York

Classes/Seminars Taught

- *Ethics for Engineers*, American Council of Engineering Companies (ACEC), Long Island Chapter, April 2022
- *Ethics for Engineers*, American Council of Engineering Companies (ACEC), Long Island Chapter, January 2016
- *Handling Potential Spoliation of Evidence Issues When Representing the Design Professional*, CNA's 54th Annual Meeting of Invited Attorneys, 2015

Publications

- "Spoliation Issues When Representing the Design Professional," *New York Law Journal*, July 14, 2015
- *Legal Update for Insurance Agents & Brokers*, contributor, July 2018 - present

Results

Dismissal of Breach of Contract and Professional Malpractice Claims Achieved at Trial

We achieved dismissal of a breach of contract and professional malpractice claim against a professional engineering firm that provided construction monitoring services for a lender. When the project went south (for a multitude of reasons unrelated to the engineer's services), the project developer, who had obtained an assignment of rights from the lender, sought to hold the engineer responsible for project cost overruns. After a seven-day bench trial and testimony from nine witnesses, the court dismissed the complaint in its entirety. In dismissing the breach of contract claim, the court held that the plaintiff failed to establish any breach of contract by the engineer, finding that the reports prepared by the engineer during the course of the project complied with its contractual obligations, with the terms of the contract being clear and unambiguous. This included a contract provision which stated that the engineer was not responsible for the malfeasance of others, including the general contractor, or the errors and/or omissions of the project architect. The court further found that, even had the plaintiff proven that there was a breach of contract by the engineer, the plaintiff still failed to prove that the lender

sustained any actual damages. In dismissing the professional malpractice cause of action, the court found that the expert testimony by the plaintiff was insufficient to establish a *prima facie* case. Specifically, the trial testimony on the plaintiff's direct case failed to establish any deviation from the accepted standards of practice in the services the engineer provided as the lender's representative.

NY Labor Law Case Won by Motion for Summary Judgement

Obtained summary judgment on behalf of an owner and tenant where plaintiff alleged violation of Labor Law §§ 240(1), 241(6) and 200 when he fell off a ladder at the premises. The plaintiff claimed that the defendants violated these Labor Law sections in failing to provide him with a secure ladder and adequate safety devices while he was working on the alarm system at the premises. Defendants contended that the activity that the plaintiff was performing constituted maintenance and not repair of the alarm system and therefore was not an activity covered under the Labor Law. Defendants further contended that the plaintiff was the sole proximate cause of the accident by taking and using a ladder from the premises without the permission of the owner or tenant instead of using a ladder from the service truck that he brought to the premises. Plaintiff's motion for summary judgment under Labor Law §240(1) was denied and the defendants' motion for summary judgment dismissing all Labor Law and common law claims was granted.

Summary Judgment for Insurance Broker in Negligence and Breach of Contract Action

Obtained summary judgment in Nassau County, New York on behalf of an insurance broker in a negligence and breach of contract action. Our client allegedly failed to procure proper insurance coverage, resulting in uninsured Superstorm Sandy-related losses claimed to be in excess of \$2.3 million. The court granted summary judgment and dismissal of the complaint, finding that the plaintiffs were unable to support its claims without non-hearsay evidence.