



David Westermann, Jr.

Partner

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David Westermann, Jr. is a Partner in the firm's Commercial Litigation Department. His practice focuses on complex construction and surety disputes, as well as related transactional matters.

With more than 44 years of legal experience, David has concentrated on development, construction, and surety litigation involving both public and private projects throughout North America, including New York, New Jersey, Delaware, Missouri, Texas, Florida, Pennsylvania, and Ontario, Canada.

He represents owners, developers, construction managers, and consultants in all aspects of construction law, including contract negotiation, claim handling, and dispute resolution. His experience encompasses mediation, arbitration, and litigation in state and federal courts, as well as proceedings before federal agency boards under the Contract Disputes Act.

As lead construction counsel, David has advised clients who are principal participants in major projects, with several exceeding \$1 billion in construction costs. His public sector work includes prisons, bridges, highways, subway tunnels, rail projects, hospitals, schools, office buildings, military facilities, stadiums, and arenas. His private sector experience spans museums, office towers, banking centers, trading floors, data facilities, hotels, residential buildings, printing plants, and educational institutions. David's total project count exceeds several hundred.

Practices

- Commercial Litigation
- Construction Contract Dispute Resolution

Industries

- Construction
- Insurance

Bar Admissions

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

Education

- J.D., Washington and Lee University School of Law, 1980
- A.B., Columbia College, Columbia University, 1977

Representative Experience

- *DeMatteis/Darcon v. City of New York*, New York Supreme Court, New York County. Obtained, after full discovery, a settlement rejecting the City's assessment of liquidated damages, providing for payment of the contract balance, and awarding delay damages in an eight-figure amount under Article 11 of the City Standard Contract.
- *Environmental Chemical Corporation v. Coastal Environmental Group, Inc.* (18 Civ. 3082). The court affirmed a multimillion-dollar award under the Federal Arbitration Act, granting an equitable adjustment on a U.S. Army Corps of Engineers project.
- *Universal Preservation Group, Inc. v. Leon D. DeMatteis Construction Corporation*, Nassau County Supreme Court (Index No. 608391-20). Obtained summary judgment enforcing a contractual liquidation provision limiting a subcontractor's claims for several million dollars, premised on owner fault, to amounts recoverable from that owner, without further claim against the general contractor.
- *Sorbara Construction Corp. v. Leon D. DeMatteis Construction Corp.*, Supreme Court of the State of New York, Nassau County (2010). Obtained summary judgment on a counterclaim against a subcontractor, without discovery, for breach of contract involving delays to a high-rise condominium project in New York City caused by the collapse of the subcontractor's tower crane.
- *Leon D. DeMatteis Construction Corp. v. Vigilant Insurance Company*, Supreme Court of the State of New York, New York County (2010). Defeated a series of bond-based defenses asserted by a surety seeking to avoid liability for delays arising from a crane collapse.
- *Millgard Corp. v. EE Cruz/NAB/Frontier-Kemper*, 2003 WL 22741664 (S.D.N.Y.). Obtained summary judgment against a contractor, dismissing the contractor's breach of contract claims that relied on extrinsic evidence and required verification of an owner-provided design.
- *City of New York v. Uniformed Firefighters Association, Local 94, IAFF, AFL-CIO*, 58 N.Y.2d 957, 447 N.E.2d 69, 460 N.Y.S.2d 521 (1983). Obtained reversal of the lower court's order granting the plaintiff's motion to vacate an arbitration award.
- *Schiavone Construction Company, Inc. v. County of Nassau*, 717 F.2d 747 (2d Cir. 1983). Obtained an award of over \$1 million for a construction company based on the cause of a break in a sewer line and for extra work performed.
- *Leon D. DeMatteis Construction Corp. v. General Services Administration*, United States Civilian Board of Contract Appeals. Secured \$27.5 million in equitable adjustments through mediation adjunct to proceedings

before the GSA Civilian Board of Contract Appeals regarding the U.S. Mission to the United Nations.

David represented key first-tier participants on the following projects, among many others:

Private Projects

- The Plaza Hotel, 768 Fifth Avenue, New York, New York
- The Metropolitan Museum of Art
- One Soho Tower, New York, New York
- 101 Lincoln Avenue, Bronx, New York
- 42 Orchard Street, Long Island City, New York
- Marymount School Major Renovation, New York, New York
- Allen-Stevenson School Major Renovation, New York, New York
- The Apollo Theater, New York, New York
- The Mondrian Hotel, 444 Park Avenue, New York, New York
- 215 Chrystie Street, New York, New York
- Essex Crossing, 120 Essex Street, New York, New York (two sites)
- 225 Fifth Avenue, New York, New York
- The O’Neill Building, New York, New York
- New Residential Tower, 310 East 52nd Street, New York, New York
- 425 Fifth Avenue Condominiums, New York, New York
- The Seville, East 77th–78th Streets and Third Avenue, New York, New York
- The Impala, New York, New York
- The Wellington Hotel, New York, New York
- The Indigo Hotel, New York, New York
- The Azure, New York, New York
- Chaminade High School, New STEM Building, Mineola, New York

Commercial Projects

- Citicorp Tower, Long Island City, New York
- Citicorp Center Condominium, 153 East 53rd Street, New York, New York
- Citibank Card Products Credit Service Centers, Erlanger, Kentucky; Napa Valley, California; and Dallas, Texas
- Citibank Tampa Bay Corporate Complex
- Bank Corporate Headquarters, Hicksville, Long Island
- Bell Atlantic Tower, Philadelphia, Pennsylvania

Public Works Projects

- Community Jail Project, New York City, Design-Build for the Department of Design and Construction (Queens site)
- Roy Wilkins Recreation Center, New York City, Design-Build for the Department of Design and Construction (Queens site)

- Seaford–Oyster Bay Outfall Sewer, Nassau County, New York
- United States Mission to the United Nations, New York, New York
- United States Military Academy, Basketball and Hockey Arena
- Mississippi Army Ammunition Plant, 175mm Artillery Shell Production Facility
- NYCTA Rail Control Center, New York, New York
- Brooklyn House of Detention, Brooklyn, New York
- Rehabilitation of Broadway/East New York Station Complex, Brooklyn, New York
- William H. Maxwell High School, Brooklyn, New York
- Frank Sinatra High School, Queens, New York
- Sunset Park High School, Brooklyn, New York

Speaking Engagements

- Book and Movie Deals and Related Copyright Issues. Nassau County Bar Association, September 2007 (with Nelson DeMille)
- Transportation Research Board 82nd Annual Meeting. Washington, D.C., January 2003
- “Performance Bonds and Demands Under the New Form.” New England Surety Bond Association, New York City, February 1999

Publications

- Co-author, “ABA Surety Law Review for 1997.” *ABA Tort and Insurance Law Journal*, Winter 1998
- Contributing author, *The Construction Claims Deskbook: Management, Documentation and Presentation of Claims (Construction Law Library)*. John Wiley & Sons, Inc., 1996
- Co-author, *New York Construction Law: What Do You Do When...?* National Business Institute, Inc., 1996