



James F. O'Brien

Partner

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New York, NY

Jim O'Brien focuses his legal practice on the defense of design professionals in the construction industry and employment litigation, including related insurance coverage matters.

Design Professionals/Construction

Well-known in New York for his legal practice in the construction litigation arena, Jim has extensive experience defending architects and engineers, construction managers, and others involved in the design and construction process before state and federal courts and in arbitrations and mediations. These matters have involved a wide range of claims, including personal injury, property damage, design defect, delay, differing site condition and breach of contract. Having spent more than 34 years defending architects and engineers' liability matters, Jim prides himself in the ability to analyze claims and identify opportunities for early, cost-effective resolution. He also imparts his knowledge to others in the field as a lecturer on construction-related claims.

Employment & Labor

Another significant component of Jim's practice is the defense of matters under Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Fair Housing Act, New York Executive Law Section 296 and similar statutes in matters before New York federal and state courts, the Equal Employment Opportunity Commission, the New York State Division of Human Rights and the New York City & Westchester County Commissions on Human Rights. In both the employment and housing contexts, Jim has handled claims for wrongful termination, sexual harassment, and age, sex, disability and national origin discrimination.

Jim also regularly provides coverage opinions in connection with a wide variety of construction and employment-related matters.

Services

- Design Professionals
- Employment & Labor
- Insurance & Reinsurance Coverage
- Construction

Education

- Pace University School of Law (J.D., 1990)
 - Pace Environmental Law Review, notes and comment editor
- Manhattan College (B.S., 1985)

Bar Admissions

- New York
- Connecticut

Court Admissions

- Supreme Court of the United States
- U.S. Court of Appeals, Second Circuit
- U.S. District Court, District of Connecticut
- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York
- U.S. District Court, Western District of New York
- U.S. District Court, Northern District of New York

Professional Affiliations

- American Bar Association
- New York State Bar Association
- Association of the Bar of the City of New York

Awards & Honors

- AV® Preeminent™ Rated by Martindale-Hubbell

Representative Matters

Architects & Engineers

Represented golf course architect in property damage claim brought by homeowners adjacent to a golf course that was undergoing renovations. After several days of trial in Westchester, New York Supreme Court, successfully moved for dismissal of plaintiffs' claims against architect due to plaintiff's failure to present expert testimony against architect. Co-defendants then discontinued all cross-claims.

Developer commenced arbitration seeking damages from project engineer claiming negligent performance and delays made the project impossible to complete due to a zoning change. After completing arbitration hearings, we received a decision in favor of

engineer with costs.

Defended architect in arbitration brought by owner of 200-year-old farmhouse in upstate New York. Owner claimed design and other errors resulted in additional costs. After arbitration hearings, arbitrator ruled that there was no departure from the standard of care and awarded the architect costs. We then negotiated for payment of the architect's attorney's fees pursuant to a prevailing party provision in the contract.

After jury selection and the start of trial in Queens County Supreme Court, negotiated a favorable settlement of serious personal injury action by construction worker on behalf of resident engineer.

Obtained summary judgment on behalf of architect in serious Labor Law case involving carpenter who fell from the roof of a building under construction. On appeal, the Appellate Division, Second Department unanimously affirmed with costs. Case later settled for more than \$1 million with no payment by architect.

Successfully moved for summary judgment or received voluntary dismissals for resident engineer-construction manager in several New York Labor Law personal injury lawsuits brought by various construction workers injured at a water treatment plant project. Successfully recovered significant defense costs for client from general contractor's carrier, as there was a duty to defend.

Represented an architect in a matter involving more than \$2 million in damages due to, *inter alia*, construction and design errors in a multimillion-dollar ski house in Windham, New York. Successfully moved for summary judgment dismissing all claims against the architect. Plaintiff appealed to New York's Appellate Division, Third Department and the decision was unanimously affirmed.

In a long-standing and contentious case in Brooklyn, New York, secured summary judgment for an architect who faced claims alleging design errors regarding a retaining wall that was built next to plaintiffs' home. Plaintiffs alleged, *inter alia*, that our client presented fraudulent applications to the Building Department to secure the building permit; and that the improperly designed wall caused in excess of \$3 million in damage to plaintiffs' home. At the close of discovery, we successfully moved for summary judgment.

Successfully moved for summary judgment in a matter involving allegations of significant damage to plaintiffs' building due to construction activities at a project next door where our client was the structural engineer. The court agreed with our arguments that, *inter alia*, client's involvement was limited to engineering design; no strict liability and no liability absent privity of contract.

Successfully moved for summary judgment in Bronx County without conducting depositions. Plaintiff claimed extensive damage to its commercial building due to excavation and underpinning work at a project next door, where our client was the geotechnical engineer. The court agreed with our arguments that client had no involvement in the excavation and underpinning activities; no strict liability and no viable

cross-claims for contribution, indemnification or failure to procure insurance.

Summary judgment granted to our engineer client before any depositions in a multimillion-dollar lawsuit with several plaintiffs alleging extensive damage to their homes as a result of construction/excavation activities next door. Also received summary judgment in related subrogation action.

Obtained summary judgment for geotechnical engineer in third-party action involving significant damages by developer on a multimillion-dollar project in New York City. After dismissal of third-party action and all cross-claims, we defeated the developer's motion to amend its complaint to assert claims directly against our client.

Obtained summary judgment for structural engineer on homeowner's claim of defective design and construction.

Employment & Related Matters

Disability discrimination claim before the New York State Division of Human Rights by former employee of insurance agency who claimed he was terminated due to alcoholism. After a trial-hearing before an ALJ, we received a favorable decision.

Disability discrimination and retaliation claim before the Westchester County Human Rights Commission (WCHRC). Claimant alleged that his disability/mental illness required him to keep a comfort animal/companion dog in his co-op apartment, which had a no pet policy. Trial before the administrative law judge (ALJ) lasted 10 days with 14 witnesses testifying. ALJ ruled in favor of the building owner, board of directors and managing agent. Successfully defended appeal within the WCHRC. New York's Appellate Division, Second Department unanimously affirmed decision.

Received no probable cause determinations from the New York State Division of Human Rights in several discrimination claims by employees based on age, race and/or religion.

Received a no probable cause finding in a sexual harassment and discrimination claim before the EEOC.