



Kenneth A. McLellan

Of Counsel

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Kenneth A. McLellan is a member of Wilson Elser's national defense team for a major technology company. He also defends clients against general liability claims, with a focus in transportation, construction and design professional matters. Ken has represented professionals in various fields, with a focus on the defense of architects & engineers and attorneys in connection with professional malpractice claims.

Over the course of his more than 25-year career, Ken has represented commercial and school busing companies in motor vehicle accident cases. He also has handled cases involving commercial vehicles operated by a major national telecommunications company, and vehicles operated by regional propane and oil companies. These matters often present unusual, challenging situations due to high-risk enterprises, such as flammable fuel transportation, or exposure of large corporate entities transporting children.

In addition to transportation matters, Ken has represented large and small design professional firms, contractors and owners involved in construction litigation. Any entity involved in construction in New York faces significant challenges, such as the potential absolute liability presented in cases involving New York State Labor Law section 240, also known as the "Scaffold Law."

Ken has handled complex motions and trials and numerous appeals. He also has handled numerous mediations and several arbitrations. Ken has written articles in areas of interest to his clients including publications such as DRI's *For the Defense* and various Claims and Litigation Management (CLM) publications. He has spoken at numerous national insurance industry conferences, including those held by the CLM and ClaimsXchange. For a number years, Ken co-chaired the annual Construction Defect ExecuSummit, and has spoken on several occasions at the Errors & Omissions ExecuSummit Conference.

Services

- Transportation
- Construction
- Design Professionals

Transportation

Ken has represented major bus companies as well as entities involved in the shipping of oil and propane. He has handled cases involving catastrophic injuries to pedestrians and children, and successfully disposed of questionable claims against trucking companies. Ken recently obtained summary judgment on liability in a New York City venue involving an intersection accident at a stop sign occurring in Staten Island. His client was a fuel oil company, with potentially significant exposure.

Construction

Ken has represented owners, contractors and design professionals in construction defect and personal injury cases, including those brought under New York's Labor Law section 240, and property damage involving claims brought under the sections of the New York City Administrative Code relative to property damage arising out of a failure to preserve and protect from injury adjoining structures during excavation. Ken is a member of the Federation of Defense and Corporate Counsel (FDCC). He recently spoke at CLM's National Construction Conference on the impact of Artificial Intelligence in Construction and in the practice of law.

Professional Liability

Ken has represented numerous types of professionals in connection with the defense of professional malpractice claims, focusing on architects & engineers and attorneys. He has extricated attorneys from questionable legal malpractice claims through filing dispositive motions.

Education

- Touro College Jacob D. Fuchsberg Law Center (J.D., 1995)
- Fordham University (B.A., 1991)

Bar Admissions

- New York
- New Jersey

Court Admissions

- U.S. Court of Appeals, Second Circuit
- 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, District of New Jersey

Professional Affiliations

- New York State Bar Association
- Suffolk County Bar Association
- Claims and Litigation Management Alliance (CLM)

- ClaimsXchange
- DRI: The Voice of the Defense Bar
- Federation of Defense and Corporate Counsel (FDCC)

Representative Matters

Represented a private prison facility that operated a halfway house in the Bronx in the Supreme Court, Bronx County, New York. The plaintiff, who was on supervised release, claimed she fell down stairs at the halfway house, sustaining injuries that required several surgeries. At trial, Ken questioned the plaintiff's credibility and presented expert testimony regarding building code compliance that led to a hung jury. The plaintiff settled the case for a small fraction of the seven-figure demand sought.

Represented an agency that operated an assisted-living residence in Brooklyn, New York. Residents claimed that our client misrepresented its stature regarding licensure and brought a putative class action in federal court claiming violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act. Ken was able to secure summary judgment, arguing that there was no evidence that the residence's purported failure to obtain licensure caused any damages.

Represented a licensed clinical social worker whose client murdered his estranged wife and then committed suicide. Ken argued that the social worker met the standard of care in connection with her treatment of her patient, whom she was seeing on an outpatient basis. The young children of the decedents brought suit as did their parents' estates. After years of procedural battles and extensive discovery, Ken filed a motion for summary judgment, and the plaintiffs agreed to voluntarily discontinue the action with prejudice against the social worker client.