

# McElroy Deutsch

## Steven Lapp



### Partner

[slapp@mdmc-law.com](mailto:slapp@mdmc-law.com)

Hartford, CT

P: [860-241-2612](tel:860-241-2612)

F: [860-522-2796](tel:860-522-2796)

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### Overview

#### Curriculum Vitae

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**STEVEN LAPP** is an advisor and litigator with more than 15 years of experience representing clients in the areas of construction, renewable energy, commercial, business tort, and consumer protection law. Mr. Lapp's practice focuses on the representation of renewable energy firms, contractors, suppliers, and sureties, as well as other Connecticut-based businesses, in dispute resolution, legal compliance and regulatory matters. Mr. Lapp represents clients in state and federal courts, in arbitrations and mediations, as well as in proceedings involving state administrative agencies, state utility regulatory authorities, and state agency investigations.

Mr. Lapp regularly represents construction managers, general contractors, trade subcontractors, suppliers, and sureties, in the prosecution and defense of complex construction claims and disputes associated with breach of contract, delay and productivity losses, extra work, disputed change orders, payment entitlement, requests for equitable adjustment, defective design issues, mechanic's liens, the federal Miller Act and state payment bond statutes, performance and payment bond claims relating to public and private projects, and "pass-through" claims against government project-owners. Additionally, Mr. Lapp represents and has counseled construction industry clients in connection with the negotiation and drafting of construction contracts, compliance with federal and state laws which govern contractor licensing, sales and uses taxes, contractor ethics, and contractor set-aside program requirements, as well as in the resolution of regulatory enforcement actions involving government claims of Disadvantaged Business Enterprise noncompliance, violations of contractor occupational trade licensing laws, and violations of related Connecticut consumer protection laws. Mr. Lapp has also represented contractors and

subcontractors in the defense of construction defect and tort claims arising from construction and/or remediation work on residential scale, private commercial scale, and public works projects, including claims alleging personal injuries and property damage related to water damage, mold conditions and abatement, abatement of asbestos containing materials, defectively installed and/or designed construction, and breach of safe construction management practices.

For more than 10 years, Mr. Lapp has been a contributing author to the Connecticut chapters and annual chapter supplements for Wolters Kluwer's Fifty State Construction Lien and Bond Law and Wolters Kluwer's Fifty State Architect, Engineer and Contractor Licensing legal treatises. He has also co-authored articles published in the Connecticut Law Tribune, including: Express Contract Terms Limit Subcontractor's Remedies, July 11, 2013, and Site Safety and Protecting the Public, Industry Safety Customs Do Not Define Standard of Care, July 13, 2015.

In his renewable energy practice, Mr. Lapp represents renewable energy firms in all areas of Connecticut legal compliance and regulatory matters. Mr. Lapp regularly counsels clients as to the constantly changing statutory and regulatory compliance requirements in the areas of renewable energy and consumer protection law, technical matters regarding the establishment and implementation of state-mandated or state-administered energy and incentive offerings to promote the deployment of renewable Front-of-the-Meter or Behind-the-Meter distributed generation sources and energy storage systems within the State of Connecticut, compliance with applicable state or local licensing and registration requirements related to both residential and commercial-industrial scale solar development projects, property tax assessment, and the preparation and use of contracts for transactions with residential consumers. Mr. Lapp also represents clients in the resolution of disputes relating to these matters, including representation in litigation, in proceedings before the Connecticut Public Utilities Regulatory Authority, or informal dispute resolution contexts, as well as in connection with client responses to state agency investigations or regulatory enforcement actions.

In addition to his construction and renewable energy practice, Mr. Lapp has also represented national-scale and Connecticut-based clients in a diverse range of business and commercial disputes. Mr. Lapp has significant experience representing clients in the resolution of internal stakeholder disputes relating to closely held business entities (S-Corp, LLC, partnership), including the prosecution and defense of breach of fiduciary duty claims, statutory shareholder "buy-out" rights with complex business valuation issues, enforcement of contractual "buy-sell" agreements, and breach of shareholder agreements, LLC operating agreements and/or partnership agreements. Additionally, Mr. Lapp has represented businesses in the prosecution and defense of contract claims, business tort claims, Connecticut Unfair Trade Practice Act claims, easement disputes and adverse possession claims, land use matters involving resolution of municipal zoning enforcement actions and judicial challenges to municipal zoning decisions, and environmental tort claims.

## Awards

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- Connecticut Law Tribune New Leaders In the Law 2015
- Listed in Super Lawyers® Rising Stars (2016-2017), a Thomson Reuters business, in the areas of Business Litigation and Construction Litigation. A description of the standard or methodology on which the accolade is based can be found [HERE](#) (No aspect of the advertisement has been approved by the Supreme Court).

## Cases

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- Represented a renewable energy firm in judicial tax appeals against 28 different Connecticut municipalities arising from denials of statutory property tax exemptions for residential Class I renewable energy sources and other alleged claims of unlawful and unauthorized assessment of municipal personal property taxes on residential rooftop solar energy systems.
- Represented a renewable energy firm in Connecticut Public Utilities Regulatory Authority proceedings relating to Connecticut's residential solar incentive tariffs and the participation of tariff-enrolled residential Class I renewable energy sources in the ISO-New England Forward Capacity Market annual Forward Capacity Auctions.
- Trial counsel in representation of an electrical subcontractor in the prosecution and defense of breach of contract claims by and against Skanksa USA Building, Inc., arising out of a project for construction of Stamford Hospital, in which the parties' opposing claims had a cumulative value in excess of \$45,000,000.
- Trial and appellate counsel in *Weston Street Hartford, LLC v. Zebra Realty, LLC*, 193 Conn. App 542 (2019), in representation of a commercial property owner in the defense of claims by a neighboring property owner seeking injunctive relief to enforce rights to a right-of-way and counterclaims for declaratory and injunctive relief alleging overburdening.
- Representation of a national-scale facilities, operations and management service provider in the defense of contract, tort and Connecticut Unfair Trade Practice Act violation claims by a Connecticut municipality and its Board of Education, seeking damages in excess of \$70 million and alleging liability for the cost of mold remediation throughout more than 20 public school facilities, as well as budget overruns for Board of Education employee wages.
- Represented a solar electrical contractor's performance bond surety in the defense of a project owner's claims alleging performance bond breach and bad faith, arising out of a project for construction of a grid-supply solar electric generating facility in Plainfield, Connecticut.
- Represented the shareholders/members of closely held business and related real estate holding LLC in the defense of claims for judicial dissolution and breach of fiduciary duty by another shareholder/member, and in prosecution of statutory claims under CGS § 33-900 for compulsory "buy-out" in lieu of dissolution, in connection with the separation of the owners of a nightclub and cabaret business in Groton, Connecticut.
- Represented a local Hartford business in connection with the preparation and approval of site plan for a commercial parking lot and approval of the same by the City of Hartford Division of Planning and Zoning, in connection with the resolution of a cease and desist order by the Hartford Zoning Enforcement Officer.
- Trial counsel in representation of an LLC member in the prosecution and defense of breach of fiduciary duty claims and enforcement of an LLC operating agreement's "buy-sell" provisions, in connection with the separation of the members of a closely held business which owned the Yale New Haven Hospital Shoreline Medical Center located in Guilford, Connecticut.
- Represented two nightclub and cabaret businesses in the defense of Lanham Act statutory claims for false advertising and false association, and state law tort claims for misappropriation of likeness, false light, defamation, negligence, and conversion, based on the businesses' alleged unauthorized use plaintiff-models' images in promotional materials posted to the businesses' social media account pages.
- Represented a mixed-use property developer in the defense of third-party claims by the City of Hartford alleging fraud and negligent misrepresentation, in a numerous-party construction litigation over development and construction of the Hartford Yard Goats baseball stadium.
- Represented a national-scale industrial painting and scaffolding supplier in the prosecution of claims for payment of more than \$520,000 and mechanic's lien enforcement, relating to services and equipment

provided at projects for construction of natural gas-fired electric generation facilities in Oxford, Connecticut and Orange County, New York.

- Represented a national-scale building materials supplier in the defense of claims that supplier performed defective work and supplied defective materials to a more than 150-unit condominium project in Hingham, Massachusetts, resulting in extensive water damage and other property damage requiring remediation.
- Represented an engineering firm in the prosecution of payment claims seeking more than \$1.3 million and the defense of counterclaims, relating to engineering design and procurement services provided to a construction manager in connection with PSEG Bridgeport Harbor Unit 5 485-MW combined-cycle electric generation facility in Bridgeport, Connecticut.
- Represented a construction manager in the prosecution of claims against the owner and architect on a project for the construction of a senior living and memory care facility in Mystic, Connecticut, including breach of contract, bad faith, violations of statutory prompt payment act requirements, mechanic's lien foreclosure, Connecticut Unfair Trade Practice Act violations, and negligence, as well as representation in the resolution of related subcontractor claims for payment.
- Represented a construction manager in defending a carpentry subcontractor's breach of contract and "cardinal change" claims arising from a project for construction of the "core and shell" of the Outpatient Pavilion at the UConn Health Center in Farmington, Connecticut.
- Representation of a window-wall subcontractor's performance bond surety in the defense of claims brought by a construction manager totaling \$6 million dollars for alleged delay damages and completion costs, arising out of a project for the construction of a 28 story hotel in downtown Manhattan.
- Representation of mechanical contractor's performance bond surety in the defense and resolution before trial through a performance-based settlement, of a performance bond claim brought by the Board of Education for the Hewlett-Woodmere School District (New York) seeking damages in excess of \$1.5 million.
- Defended a contractor against a \$100,000 plus UCC Article 9 non-payment claim brought by the company providing "factor" financing for a subcontractor, as assignee, resulting in a settlement less than 20% of the amount initially claimed by the plaintiff.
- Representation of a site-work subcontractor in the prosecution of nonpayment claims, payment bond claims, and public improvement lien claims, against the general contractor, its surety, and City of Rye, arising out of piling work performed as part of a bridge renovation project for the City of Rye, New York.
- Representation of a Massachusetts-based plumbing contractor in a licensing enforcement action by the Connecticut Department of Consumer Protection, in which the contractor was accused of violating multiple "occupational trade" regulations pertaining to plumbing work by performing work without a license, and which was resolved without the imposition of any fines or sanctions against the contractor.
- Represented a local remediation contractor in the defense of homeowner claims that delays by the contractor in performing water damage remediation work caused and/or exacerbated mold conditions within a residential premises.
- Represented a construction manager in the defense of claims by a subcontractor's employee that the employee fell while performing structural steel erection activities and incurred serious injuries as a result of negligently performed implementation and oversight of safe construction practices specific for the steel erection trade and for construction site safety generally, at a project for the construction of the Connecticut Post Mall in Milford, Connecticut.

## Industries

Construction

Energy

Insurance

## **Practices**

Construction

Government and Regulatory Affairs

Litigation

Litigation

Renewable Energy

Surety

## **Education**

University of Connecticut (B.A. Political Science)

Quinnipiac University School of Law (J.D., cum laude)

## **Admissions**

State of Connecticut

State of New York

U.S. District Court, District of Connecticut

## **Memberships**

Connecticut Lawyers Collaborative for Diversity, Board of Directors

Connecticut Bar Association, Construction Law Section, Executive Committee