



## Mark D. Shifton

PARTNER

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Mark D. Shifton focuses his practice in the areas of complex civil and commercial litigation in the state and federal courts in New Jersey and New York. Mark routinely represents owners, design professionals, and contractors in cases involving construction disputes and catastrophic property losses, and has extensive experience representing manufacturers, distributors, and retailers of a wide variety of industrial, consumer, and recreational products, including green building products, in both individual and class actions. Mark is regularly called upon to speak to various legal, insurance, and industry organizations on various topics such as investigating and defending catastrophic property loss claims, construction defect litigation, and risk management. Mark also routinely defends professional liability actions brought against attorneys, architects, and engineers, as well as the insurance industry and healthcare professionals.

In addition to his complex litigation practice, Mark also maintains a practice in the area of green building and sustainable development and routinely advises developers, design professionals, and contractors about the rapidly-evolving standards and developments in green building. Mark has been accredited as a LEED Green Associate by the Green Building Certification Institute, and has spoken widely on construction and green building issues before a variety of organizations, including the American Institute of Architects, the Defense Research Institute, the Claims and Litigation Management Alliance, the National Association of Home Builders, and the Property & Liability Resource Bureau.

Mark recently began a two-year term as the Vice Chair of the Defense Research Institute's Construction Law Committee, serves as the Co-Chair of the New Jersey Defense Association's Construction Law Committee, and is the former Chair of the DRI Product Liability Committee's Building Products Specialized Litigation Group. Mark is also a former Chair of the New Jersey State Bar Association's Product Liability and Mass Tort Section and serves as an invited member of the New Jersey State Bar Association's Special Committee on Renewable Energy, Cleantech and Climate Change.

Mark earned his Juris Doctorate from Fordham University School of Law in New York City, where he was the Notes and Articles Editor of the Fordham Urban Law Journal, and was active on the Moot Court Board. Mark's personal interests include wreck diving off the Jersey Shore, struggling through triathlons, and reliving his teenage dreams of being a rock guitarist. To that end, Mark is the lead guitarist for *The Defense Never Rests*, a band composed of DRI Members which has played at the DRI's Annual Meeting every year since 2021. Prior to becoming an attorney, Mark was an Emergency Medical Technician in New York.

Mark is a graduate of the David Rhoads American Inn of Court. Each year from 2011 through 2017, Mark was named as a Rising Star by the New Jersey edition of Super Lawyers, and he has been named as a Super Lawyer each year since 2019.

## Experience

- Argued before Supreme Court of New Jersey in groundbreaking case of *Palisades at Fort Lee v. 100 Old Palisade, LLC*, 169 A.3d 473, 230 N.J. 427 (2017).
- Successfully obtained summary judgment of all claims asserted against an attorney.
- Successfully obtained a dismissal of claims of professional malpractice against an attorney due to the plaintiff's failure to file a timely affidavit of merit.
- Successfully obtained summary judgment in favor of healthcare providers in several New York counties.

## Honors

- Super Lawyers® New Jersey (2019 - 2024)
- Super Lawyers® New Jersey Rising Star (2011 - 2017)
- Fellow of the Construction Lawyers Society of America (CLSA)

## Professional Affiliations

- Defense Research Institute, Construction Law Committee, Vice Chair

- Defense Research Institute, Product Liability Committee, Building Products SLG, Past Chair
- New Jersey Defense Association, Construction Law Section, Co-Chair
- New Jersey State Bar Association, Product Liability and Mass Tort Section, Chair
- New Jersey State Bar Association, Renewable Energy, Cleantech and Climate Change Committee, Invited Member
- U.S. Green Building Council, LEED Green Associate
- American Society for Testing and Materials International (ASTM), Member of Subcommittees E60.01 (Buildings and Construction), E60.13 (Sustainable Manufacturing) and Subcommittee E60.80 (General Sustainability)

## Civic Activities

- Princeton Chamber of Commerce
- Vincent J. Apruzzese Mock Trial Competition, Mock Trial Judge
- Pet Rescue of Mercer, Volunteer

## Publications

- “Ensure Proper Coverage by Working Under Owner and Contractor-Controlled Insurance Policies,” *Construction Executive*, July 2022. (LINK)
- “Legal Risks of Green Building,” *Construction Executive*, March 2021. (Legal Risks of Green Building (constructionexec.com))
- “Unique Spoliation Considerations in Construction Litigation,” *Law360*, August 2019. (Subscription Required)
- “Does (Sample) Size Matter? Identifying and Challenging Unreliable Methodologies Employed in Statistical Extrapolation,” *For The Defense*, Defense Research Institute, February 2019.
- “Just Who the Hell Are You? Liability of Design Professionals in the Absence of Privity,” *The Critical Path*, Volume 22, Issue 2, August 2018. (PDF)
- “Indecent Exposure – The Erosion of Privity and Expanding Design Professional Liability,” *Claims and Litigation Management Alliance Magazine*, September 20, 2018. (PDF)
- “Playing Defense – The Varying Applicability of Statutes of Repose for Product Manufacturers in Construction Defect Actions,” *The Critical Path*, Volume 21, Issue 4, December 2017. (PDF)

- “Testing Judicial Control Over Attorney Conduct at Depositions,” *Law360*, October 24, 2017. (**Subscription Required**)
- “No Repose for Building Product Manufacturers”, *New Jersey State Bar Association's Product Liability and Mass Tort Section Newsletter*, Volume 16, No. 1, September 2017. (**PDF**)
- “New York’s Expert Discovery Rules Are Archaic,” *Law360*, July 20, 2017. (**Subscription Required**)
- “Affidavits of Merit and the Design Professional: Extricating the Design Professional from Malpractice Litigation at the Earliest Opportunity,” *For The Defense*, Defense Research Institute, February 2017. (**PDF**)
- “Subcontractors’ Rights and Woes: Enforceability of Pay-if-Paid Clauses in New Jersey and New York Contracts”, *New Jersey State Bar Association's Construction Law Section Newsletter*, Volume 18, Issue 1, September 2016. (**PDF**)
- “Cypress Point Redux – New Jersey Supreme Court Holds Developer’s CGL Policy Covers Condominium Association’s Consequential Damages Caused by Water Infiltration,” *The Critical Path*, Volume 20, Issue 3, September 2016. (**PDF**)
- “The Integrated Product Doctrine: At the Nexus Between Products Liability and Construction”, *New Jersey State Bar Association's Product Liability and Mass Tort Section Newsletter*, Volume 15, No. 1, July 2016. (**PDF**)
- “Unintended Consequences – New Jersey Supreme Court to Decide Issue of Whether Consequential Damages are Covered By CGL Policy,” *The Critical Path*, Volume 20, Issue 1, April 2016. (**PDF**)
- “Raindrops Keep Falling On My Head: Fourth Circuit Reverses Summary Judgment in Case Involving World’s First LEED Platinum Building,” *The Critical Path*, Volume 19, Issue 1, April 2015. (**PDF**)
- “2012: A Survey of Products Liability Cases From the Past Year,” *New Jersey State Bar Association's Product Liability and Toxic Tort Section Newsletter*, Volume 14, No. 1, June 2013. (**PDF**)
- “Florida Supreme Court Limits Expansion of Economic Loss Rule,” *Building Blocks*, Volume 4, Issue 1, May 2013. (**PDF**)
- “Trying Not to Mess With Texas: Fifth Circuit Certifies Questions on Contractual Liability Exclusion,” *The Critical Path*, Volume 16, Issue 3, December 2012. (**PDF**)
- “A Survey of Products Liability Cases From the Past Year,” *New Jersey State Bar Association's Product Liability and Toxic Tort Section Newsletter*, Volume 13, No. 1, May 2012. (**PDF**)
- “Identity Crisis: The Obsolescence of *Jasopersaud v. Rho* and the Medical Malpractice Expert Exception,” *30 Fordham Urb. L.J.* 2061, 2003.

- “The Restatement (Third) of Torts: Products Liability – The ALI’s Cure for Prescription Drug Design Liability,” *29 Fordham Urb. L.J.* 2343, 2002.

## Speaking Engagements

- “You Can’t Have a Conflict with an OCIP/CCIP Policy? Wait, You Can?” 2023 Construction Law Conference, Defense Research Institute, Las Vegas, NV, January 2023.
- “Climate Change: Trends and Strategies to Limit Claims and Mitigate Risk,” 2022 Claims and Litigation Management Alliance Construction Law Conference, San Diego, CA, September 2022.
- “New Jersey Construction Law,” HalfMoon Education, Inc., Webinar, November 2021.
- “New Jersey Construction Law for Public Projects,” HalfMoon Education, Inc., Webinar, February 2021.
- “Indecent Exposure: The Erosion of Privity and Expanding Design Professional Liability,” 2018 Claims and Litigation Management Alliance Management and Professional Liability Conference, Boston, MA, June 2018.
- “Construction Contracts and Law,” Three-Part Webinar Series, National Association of Home Builders, May 2018.
- “Superstorms to Terrorism: State of Emergency,” 2018 Claims Conference & Insurance Services Expo, Property & Liability Resource Bureau, Orlando, FL, April 2018.
- “Managing and Defending Catastrophic Claims in the Face of Adverse Media Exposure,” 2017 Claims and Litigation Management Alliance & Business Insurance Construction Conference, San Diego, CA, October 2017.
- “Construction Contracts and Law,” Builders League of South Jersey/National Association of Home Builders, Cherry Hill, NJ, April 2017.
- “Construction Contracts and Law,” Capital Region Builders & Remodelers Association/National Association of Home Builders, Latham, NY, March 2017.
- “The CEO Said What? Crisis Management (Before, During, and After a Public Relations Disaster) and the Corporate Client,” 2017 Construction Law Conference, Defense Research Institute, Las Vegas, NV, March 2017.
- “When Construction and Products Liability Collide, New Jersey State Bar Association,” Construction Law Section Meeting, New Brunswick, NJ, November 2016.
- “Anatomy of a Building Collapse,” 2016 Large Loss Conference, Property & Liability Resource Bureau, Chicago, IL, October 2016.

- “Construction Law 2016: Hot Topics for Residential & Commercial Construction Practitioners,” New Jersey State Bar Association, Institute for Continuing Legal Education, New Brunswick, NJ, June 2016.
- “LEED Perspectives: The Legal Risks of Green Building,” 2016 Construction Law Conference, Defense Research Institute, New Orleans, LA, June 2016.
- “The Constitutional Convention of 1947: From the Court of Errors and Appeals to Multicounty Litigation,” New Jersey State Bar Association’s Annual Meeting and Convention, Atlantic City, NJ, May 2016.
- “Product Liability 2016: Back to Basics – Fundamentals of a Strong Product Liability Practice,” New Jersey State Bar Association, Institute for Continuing Legal Education, New Brunswick, NJ, March 2016.
- “Anatomy of a Forensic Engineering Project,” Forensic Engineering 7th Congress, American Society of Civil Engineers, Miami, FL, November 2015.
- “Chinese Drywall Claims: Are They Dead/Where Are We Now?,” 2015 Product Liability Conference, Defense Research Institute, Las Vegas, NV, February 2015.
- “Legal Risks of Green Building,” Design on the Delaware, AIA Philadelphia, Philadelphia, PA, October 2013.

## Capabilities

### Practice Areas

- Construction
- Catastrophic Construction Accidents
- Construction Litigation
- Insurance
- Defense Litigation
- Commercial Litigation
- Appellate Advocacy
- Professional Liability
- Sports and Recreation

## Credentials

### Admitted to Practice

- New Jersey

- New York
- United States District Court, District of New Jersey
- United States District Court, Eastern District of New York
- United States District Court, Southern District of New York
- United States District Court, Northern District of New York
- United States Court of Appeals, Second Circuit
- United States Court of Appeals, Third Circuit

## **Education**

- Fordham University School of Law, J.D.  
Recipient of Best Brief Award, 2001 I. Maurice Wormser Moot Court Competition  
Recipient of Archibald R. Murray Public Service Award  
Notes and Articles Editor, Fordham Urban Law Journal  
Associate Editor, Fordham Moot Court Board  
Senior Member, Brendan C. Moore Trial Advocates
- State University of New York at Buffalo, B.A.