



DAVID M. MCLAIN

STATEMENT OF PRACTICE:

David M. McLain is a founding member of Higgins, Hopkins, McLain & Roswell, LLC, a firm which specializes in construction law and construction litigation throughout Colorado. Mr. McLain received his undergraduate degree from Colorado State University, graduating *cum laude*, and his law degree from the University of Denver, College of Law. Mr. McLain completed the Claims and Litigation Management Alliance Litigation Management Institute, earning the designation from that organization as a Certified Litigation Management Professional. He has a general civil litigation practice with an emphasis on the defense of complex construction lawsuits on behalf of developers, general contractors, and other construction professionals. As a result of the experience gained by defending some of Colorado's largest residential construction defect lawsuits, construction professionals seek out Mr. McLain to consult on risk avoidance and risk management strategies. Currently among his clients are several of the state's largest home builders, regional and custom builders, and numerous insurance carriers. In 2015, Law Week Colorado named Mr. McLain's as the Barrister's Choice for Best Construction Defects Lawyer for Defendants. In 2019, he was recognized by that same publication as the People's Choice in the same category. Mr. McLain is an AV® Preeminent™ Peer Review Rated attorney by Martindale-Hubbell and is a regular speaker at local, regional, and national seminars regarding construction defect litigation in Colorado.

PROFESSIONAL EXPERIENCE:

Higgins, Hopkins, McLain & Roswell, L.L.C. – Founding Member Denver, Colorado	2001 to Present
Long & Jaudon, P.C. – Associate Attorney Denver, Colorado	1998 to 2001

HONORS AND AWARDS:

Selected for inclusion in the 2021 *Best Lawyers in America* for construction law.

Selected for inclusion in the 2020 and 2021 *Colorado Super Lawyers* for construction litigation by Law & Politics Magazine.

Named as 2019's People's Choice for Best Construction Defects Lawyer for Defendants by *Law Week Colorado*.

Named as 2015's Barrister's Choice for Best Construction Defects Lawyer for Defendants by *Law Week Colorado*.

DAVID M. MCLAIN (CONT'D)

AV® Preeminent™ Peer Review Rated by Martindale-Hubbell.¹

Selected for inclusion in the 2009 through 2012 *Colorado Rising Stars* for construction litigation and construction/surety law by Law & Politics Magazine.

Nominated as one of 2009 through 2012's *Forty Under 40* by the Denver Business Journal.

Eagle Scout, Boy Scouts of America, Troop 143, Denver, CO, September 24, 1990.

Member of American Mensa.

PROFESSIONAL ACTIVITIES:

- **Fellow**, Colorado Lawyers Society of America (2018)
- **Member**, Colorado Association of Home Builders' Board of Directors (2013 to Present) and Executive Committee (2013 to 2017)
- **Certified Litigation Management Professional**, Claims and Litigation Management Alliance, Litigation Management Institute (October 2013)
- **Voting Member**, Government Affairs Committee of the Colorado Association of Home Builders (2010 to Present)
- **At-Large Director**, Colorado Defense Lawyers Association (2010 to 2011)
- **Member**, Home Builders Association of Metro Denver
- **Board Member**, Associate Member Council of the Home Builders Association of Metro Denver (2003 to 2004)
- **Graduate**, Home Builders Association of Metro Denver, *Quality Construction Committee Certification Course* (2002)
- **Member**, Colorado Association of Home Builders
- **Member**, Construction Law Attorney Forum of the National Association of Home Builders (2009 to Present)
- **Member**, Claims & Litigation Management Alliance
- **Member**, Colorado Bar Association
- **Member**, Denver Bar Association
- **Graduate**, Rocky Mountain Deposition Program: Taking and Defending Depositions, National Institute for Trial Advocacy (1998)
- **Graduate**, Rocky Mountain Regional Program, Building Trial Skills, National Institute for Trial Advocacy (1999)

¹ AV® Preeminent™ and BV® Distinguished™ are certification marks of Reed Elsevier Properties Inc., used in accordance with the Martindale-Hubbell certification procedures, standards and policies.

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BAR ADMISSIONS:

United States District Court for the District of Colorado, 1999

United States Court of Appeals for the Tenth Circuit, 1999

Colorado Supreme Court, 1998

EDUCATION:

Juris Doctor, University of Denver College of Law, 1998

Bachelor of Arts, Political Science, cum laude, Colorado State University, 1995

PUBLICATIONS:

- David M. McLain, *Attorneys' fee clauses are engraved invitations to sue*, COLORADO BUILDER (Spring 2021)
- David M. McLain, *Colorado requires builders to accommodate high-efficiency devices in new homes*, COLORADO BUILDER (Winter 2020)
- David M. McLain, *Colorado's abbreviated legislative session offers builders a reprieve*, COLORADO BUILDER (Fall 2020)
- David M. McLain, *Most common OSHA violations highlight ongoing risks*, COLORADO BUILDER (Summer 2020)
- David M. McLain, *Will affordable housing ever come back to Colorado?*, COLORADO BUILDER (Spring 2020)
- David M. McLain, *What to look for in subcontractor warranty endorsements*, COLORADO BUILDER (Winter 2019)
- David M. McLain, *Why builders should reconsider arbitration clauses in construction contracts*, COLORADO BUILDER (Fall 2019)
- David M. McLain, *3 ways to reduce construction defect claims*, COLORADO BUILDER (Summer 2019)
- David M. McLain, *What are the most commonly claimed issues in construction defect litigation?*, COLORADO BUILDER (Spring 2019)
- David M. McLain, *Two things to consider before making warranty repairs*, COLORADO BUILDER (Winter 2018)

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- David M. McLain, *What a construction defect “win” looks like for a builder*, COLORADO BUILDER (Fall 2018)
- David M. McLain, *2018 Colorado legislative wrap-up*, COLORADO BUILDER (Summer 2018)
- David M. McLain, *The next evolution in Colorado construction defect litigation? Single-family home builders could be in the crosshairs*, COLORADO BUILDER (Spring 2018)
- David M. McLain, *Recent Changes in the Law Affecting Construction Defect Litigation*, COLORADO BUILDER FORUM (Summer 2017)
- David M. McLain, *Local Pols Stiff Colorado Plaintiff’s Bar*, CLM CONSTRUCTION CLAIMS Magazine (Summer 2016)
- Dennis Huspeni, *Construction Defects Litigation Reform: Statewide Issue* (interview of David M. McLain), COLORADO BUILDER FORUM (Fall 2015)
- Kim Jackson, *Appellate Court Upholds State Statute: Rules That Homebuilder’s Arbitration Clause is Enforceable* (interview of David M. McLain), COLORADO BUILDER FORUM (Summer 2015)
- David M. McLain, *Construction Case Update: Vallagio v. Metropolitan Homes: The Colorado Court of Appeals’ Decision Protecting a Declarant’s Right to Arbitrate Construction Defect Cases*, MERIT BUILDER (Summer 2015)
- David M. McLain, *Work to Live, Not Live to Work*, EO OCTANE MAGAZINE (March 2015)
- David M. McLain, *Another Attainable Housing Fight on the Horizon: Preparing for the 2015 Colorado Legislative Session*, MERIT BUILDER (February 2015)
- David M. McLain, *The Hidden Dangers of Construction Litigation*, COMMON INTERESTS, CAI Rocky Mountain Chapter (March 2012)
- David M. McLain & Bret L. Cogdill, *From Dream Home to Nightmare: Risk Management From the Perspectives of the Homeowner and the Home Builder*, MOUNTAIN BUILDER, ASPEN AND VAIL EDITION, Volume III (2012)
- David M. McLain, *Some Builders Are Choosing to Discontinue Insurance Coverage: Is Now Really the Time to Bare It All?*, COLORADO BUILDER FORUM (September/October 2011)

DAVID M. MCLAIN (CONT'D)

- David M. McLain, *Construction Defects Lawsuits Are Avoidable: Homeowners and Builders Can Take Mutual Steps to Avoid Costly Litigation*, MOUNTAIN BUILDER, ASPEN AND VAIL EDITION, Volume II (2011)
- David M. McLain, *One Court Interprets Newly Enacted Construction Defects Legislation as Matter of Law. Will Others Do the Same?*, COLORADO BUILDER FORUM (Winter 2010)
- David M. McLain & Sheri H. Roswell eds., *Construction Litigation Desk Reference: A State-By-State Compendium (Colorado Chapter)*, DRI, THE VOICE OF THE DEFENSE BAR (2010)
- David M. McLain, *Strategies for Managing Your Risk*, COLORADO BUILDER FORUM (Winter 2010)
- Kim Jackson, *Practical Solutions for Preventing Construction Defects Lawsuits (interview of David M. McLain)*, COLORADO BUILDER FORUM (January/February Edition 2009)
- David M. McLain & Alex M. Nelson, *Additional Insured and Insured Contract Liability; Insurance Coverage for General Contractors*, COLORADO LAWYER (November 2007)
- Additionally, David M. McLain writes entries for the firm's blog, Colorado Construction Litigation, which can be found at www.coloradoconstructionlitigation.com.

SPEAKING ENGAGEMENTS:

- **2020 CLM Focus: Cannabis, Environmental, Insurance Fraud, Property, Subrogation, Claims & Litigation**, Claims & Litigation Management Alliance, virtual presentation, November 4, 2020
"Science or Fiction – The Art of Allocation in Claims" – Co-Speaker
- **Claims College – School of Construction**, Claims & Litigation Management Alliance, virtual presentation, September 10, 2020
"Construction Defect Liability Theories and Defenses" – Co-Presenter
- **State of the State: Annual Legislative Update**, Construction Resource Group, virtual presentation, August 26, 2020
- **Claims College – School of Construction**, Claims & Litigation Management Alliance, Baltimore, MD, September 6, 2019
"Construction Defect Liability Theories and Defenses" – Co-Presenter
- **State of the State: Annual Legislative Update**, Construction Resource Group, Englewood, CO, June 12, 2019
- **Ethics in Claim Management: Issues & Pitfalls in Mediation and Negotiations**, Crum & Forster, Morristown, NJ, October 18, 2018- Co-Presenter

DAVID M. MCLAIN (CONT'D)

- **Claims College – School of Construction, Claims & Litigation Management Alliance, Baltimore, MD, September 6, 2018**
“Construction Defect Liability Theories and Defenses” – Co-Presenter
- **Condominium Lending Workshop 2018, Mortgage Bankers Association, Denver, CO, April 11, 2018**
“Condo Defect Litigation: The Colorado Perspective” – Panelist
- **Understanding Contracts & Subcontracts, Mountain to Mesa Home Builders Association, Glenwood Springs, CO, March 22, 2018** – Presenter
- **Claims College – School of Construction, Claims & Litigation Management Alliance, Baltimore, MD, September 7, 2017**
“Construction Defect Liability Theories and Defenses” – Co-Presenter
- **Construction Defects Reform – Debrief and Discussion, Housing & Building Association of Colorado Springs, Colorado Springs, CO, June 29, 2017**
“Brief Construction Defect History” – Presenter
“Establishment of the Homeownership Opportunity Alliance and Past Efforts” – Presenter
“Local Ordinance Efforts and Effects” – Presenter
- **Construction Defect Litigation Lunch & Learn, Construction Resource Group, Englewood, CO, May 23, 2017**
“State of the State: Annual Legislative Update” – Presenter
- **Claims College – School of Construction, Claims & Litigation Management Alliance, Baltimore, MD, September 8, 2016**
“Construction Defect Liability Theories and Defenses” – Co-Presenter
- **Claims College – School of Construction, Claims & Litigation Management Alliance, Philadelphia, PA, September 11, 2015**
“Construction Defect Liability Theories and Defenses” – Co-Presenter
- **Everything You Need to Know About Risk Management Through the Life of Your Project and Beyond – Lunch & Learn, Construction Resource Group, Englewood, CO, July 22, 2015**
“Post-Construction” – Co-Presenter

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- **Full Caucus Meeting & Construction Defect Workshop**, Metro Mayors Caucus, Lakewood, CO, June 3, 2015

“MMC Workshop: Local Solutions for Construction Defects” – Co-Presenter

- **Everything You Need to Know About Risk Management Through the Life of Your Project and Beyond – Lunch & Learn**, Construction Resource Group, Englewood, CO, April 15, 2015

“Course of Construction” – Co-Presenter

- **Everything You Need to Know About Risk Management Through the Life of Your Project and Beyond – Lunch & Learn**, Construction Resource Group, Englewood, CO, February 20, 2015

“Pre-Construction” – Co-Presenter

- **Construction Defect Reform – A Legislative Preview**, Colorado Defense Lawyers’ Association, Denver, CO, December 10, 2014

“Panel Discussion Regarding the Defense Community’s Opinions on Various Approaches to Construction Defect Reform” – Moderator

- **3rd Friday “Community Focus” Breakfast**, Arvada Chamber of Commerce, Arvada, CO, November 21, 2014

“Understanding Construction Defects” – Co-Presenter

- **Construction Hot Topics 2014 – Lunch & Learn**, Construction Resource Group, Englewood, CO, October 22, 2014

“Labor, Law & Politics” – Co-Presenter

- **20th Annual Construction Litigation and Insurance Coverage Conference**, MC Consultants, San Diego, CA, September 19, 2014

“Rocky Mountain Breakout Session: Coverage and Current Trends” – Panelist

- **Claims College – School of Construction**, Claims & Litigation Management Alliance, Philadelphia, PA, September 9, 2014

“Construction Defect Liability Theories and Defenses” – Co-Presenter

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- **Rocky Mountain Land Use Institute 2014 Land Use Conference**, University of Denver Sturm College of Law, Denver, CO, March 14, 2014

“Crashing Colorado’s Recovery? The State of Construction Defect Litigation” – Panelist

- **Construction Defect Litigation Lunch & Learn**, Greenwood Village, CO, November 5, 2013

“How Did We Get Here? Now What Do We Do? and How to Protect Ourselves From Future Claims?” – Co-Presenter

- **Construction Industry Networking Group – Monthly Breakfast Meeting**, Centennial, CO, South Metro Denver Chamber, April 16, 2013

“Accord Insurance Forms – What You Don’t Know Can Hurt You” – Co-Presenter

- **Builder Eye Opener Breakfast**, Greenwood Village, CO, Home Builders Association of Metro Denver, March 21, 2013

“Construction Defect Claims: The Good the Bad and the Ugly” – Co-Presenter

- **Small Business Development Center Training Seminar**, Denver, CO, Denver Metro Chamber of Commerce, March 7, 2013

“Managing Construction Risk From Start to Finish” – Co-Presenter

- **Building Your Tomorrow Today - 35th Annual Conference**, Crested Butte, CO, Colorado Defense Lawyers Association, July 28, 2012

“Common Building Code Violations” – Co-Presenter

- **PIIAC and Young Agents of Colorado Seminar**, Denver, CO, Professional Independent Insurance Agents of Colorado, January 26, 2012

“The GL Marketplace for Construction Professionals and Legal Issues Post HB 10 1394” - Co-Presenter

- **Rocky Mountain Builder Conference & Expo**, Beaver Creek, CO, Colorado Association of Home Builders, October 7, 2010

“Construction Defect Claims in Colorado and HB 1394” - Co-Presenter

- **Construction Defect Claims in Colorado**, Denver, CO, Lorman Education Services, June 24, 2010

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"What's Happening in Colorado Construction Law?" - Co-Presenter

"Additional Insured Coverage for Developers and General Contractors"- Co-Presenter

- **West Coast Casualty's Construction Defect Seminar**, Anaheim, CA, May 13, 2010

"Standing. . . Who Really Has the Right to Bring an Action in Construction Defect Cases?" – Panelist

- **Colorado Construction Defect Law Seminar**, Denver, CO, MC Consultants, Inc. and Esquire Solutions, February 25, 2010

"Colorado Construction Defect Law Update" – Panelist

- **Rocky Mountain Builder Conference & Expo**, Beaver Creek, CO, Colorado Association of Home Builders, October 8, 2009

"Construction Defects A to Z"- Co-Presenter

- **MC Consultants' 15th Annual West Region Construction Defect and Construction Law Conference**, San Diego, CA, September 18, 2009

"Rocky Mountain States Coverage & Current Trends" - Moderator and Panelist

- **Construction Defect Claims in Colorado, Denver, CO**, Lorman Education Services, January 13, 2009

"What's Happening in Colorado Construction Law?" - Co-Presenter

"Additional Insured Coverage for Developers and General Contractors" - Co-Presenter

- **MC Consultants' 14th Annual Conference - West Region Construction Defect & Construction Law Conference**, Colorado Springs, CO, October 17, 2008

"New Conflicts with AI Coverage" – Panelist

- **Using OCIPs and CCIPs in Colorado**, Denver, CO, Lorman Education Services, June 25, 2008

"Construction Defect Claims and Coverage Under a Liability Policy" - Co-Presenter

"Coverage Considerations Under an OCIP or CCIP" - Co-Presenter

"Claim Issues Under OCIP or CCIP" - Co-Presenter

- **West Coast Casualty's Construction Defect Seminar**, Anaheim, CA, May 8, 2008

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"The Rest of the West: The 5 Things You Need to Know About CO, ID, HI, WA, and OR" – Panelist

- **Construction Claims in Colorado**, Denver, CO, Lorman Education Services, January 10, 2008

"Happening in Construction Law Across the County?" - Co-Presenter

- **MC Consultants' 13th Annual Seminar - Handling Construction Defect Claims: Strategies & Tactics**, Colorado Springs, CO, October 20, 2007

"Colorado Coverage & Economic Loss Issues" – Panelist

- **Construction Defect Claims in Colorado**, Denver, CO, Lorman Education Services, January 10, 2007

"Update on Changes in the Law" - Presenter

- **Construction Defect Claims in Colorado**, Denver, CO, Lorman Education Services, January 19, 2006

"Update on Changes in the Law" - Presenter

"Construction Defect Litigation - Panel Discussion" – Panelist

- **Construction Defect Claims in Colorado**, Colorado Springs, CO, Lorman Education Services, August 10, 2005

"Update on Changes in the Law" - Presenter

"Litigating Construction Defect Claims" - Co-Presenter

- **Construction Defect Claims in Colorado**, Denver, CO, Lorman Education Services, January 19, 2005

"Update on Changes in the Law" - Presenter

"The Aftermath of Amendment 34: Is H.B. 1161 Still in Effect or Are We Playing Under New Set of Rules?" - Panelist

"Case Study - The Sinking Restaurant" - Co-Presenter

- **Construction Defect Claims in Colorado**, Colorado Springs, CO, Lorman Education Services, August 31, 2004

"Update on Changes in the Law" - Presenter

"Litigating Construction Defect Claims" - Co-Presenter

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- **Construction Defect Claims in Colorado**, Denver, CO, Lorman Education Services, January 7, 2004

"Update on Changes in the Law" - Presenter

- **Construction Defect Claims in Colorado**, Denver, CO, Lorman Education Services, January 24, 2003

"Case Study - The Sinking Restaurant" - Co-Presenter

REPORTED CASES:

Microsemi Corp. of Colorado v. Broomfield County Bd. of Equalization, 200 P.3d 1123 (Colorado Court of Appeals 2008).

Stiff v. Bilden Homes, Inc., 88 P.3d 639 (Colorado Court of Appeals 2003).

Cooper v. United States Ski Ass'n, 48 P.3d 1229 (Colorado Supreme Court 2002).

Cooper v. United States Ski Ass'n, 32 P.3d 502 (Colorado Court of Appeals 2000).