

# Counsel<sup>to</sup> Counsel



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# Building on Trust

*Forest City Ratner Companies and Duane Morris LLP*

By Steven Andersen

The New York Times Building is a marriage of form and function. Towering over Eighth Avenue, the skyscraper's bold façade of projecting horizontal rails suggests columns of text. Inside the public lobby a hardwood floor, intended to wear and age over time, recalls the warm vitality of an old newsroom. In contrast, the walls of the central corridor are lined with 560 small digital screens that randomly cull and display text from the current edition of *The Times*. It's a fusion of past and potential, of legacy and currency, and a fitting home for the paper of record.

Designed by the renowned architect Renzo Piano, the Times Building is a testament to partnership. The building is co-owned by The New York Times Company and developer Forest City Ratner Companies, which managed its design and construction. The project was realized with the help of another partnership: the longstanding relationship between Forest City Ratner and a group of attorneys at Duane Morris LLP, led by Partner Allen J. Ross.

"Allen and his team have an unbelievable wealth of experience, and they're connected to almost everyone in the industry," says David Berliner, Forest City Ratner's general counsel and executive vice president. "Every time we have an issue that we need their help with, they always know the person, or know someone who knows them. They use their relationships to solve problems. It



*Linda Chiarelli, Forest City Ratner Companies;  
Allen J. Ross, Duane Morris LLP*

always helps to have someone who is known in the industry and trusted."

## Confidence and Respect

A wholly owned subsidiary of Forest City Enterprises, Inc., Brooklyn-based Forest City Ratner focuses on real estate development projects in New York City and the surrounding area. With 10 in-house lawyers, the company manages some of the largest development projects in the nation's most demanding real estate market.

The company first engaged Ross in 1993. At the time, Ross was a principal in his own law firm, Ross & Cohen, LLP. Despite the fact that the group has changed firms several times as a result of a series of mergers, the client relationship remains strong, and Frederick Cohen joined Duane Morris with Ross and 18 other colleagues late last year.

Berliner says Forest City Ratner uses the Duane Morris attorneys for all facets of the construction process. On the front end, they provide counsel on structuring the various contractor relationships, then negotiating and documenting contracts with architects, engineers and the dozens of consultants and contractors that work on a large project. Once the building is in progress, the outside counsel provide advice on claims avoidance and contract interpretation. Finally, they deal with the construction disputes that inevitably arise.

"Litigation is obviously the most drastic aspect, but there are many others," Berliner explains. "We've done mediation with them, or just flat-out negotiation to reach a settlement, and they are extremely good at that."

For his part, Ross is understated about his group's service to Forest City Ratner.

"It's mainly a level of confidence that has evolved over time," he says. "I think they see us as problem solvers. We try to be economic about how we get them through a litigation."

Photography by Greg Weiner

## Forest City Ratner Companies

Forest City Ratner Companies is a wholly owned subsidiary of Forest City Enterprises, Inc., a \$10.9 billion publicly traded real estate company. Based in Brooklyn, Forest City Ratner owns and operates 11 million square feet of commercial property in the New York metropolitan area. The company routinely takes on large, mixed-use developments, including the Frank Gehry-designed Beekman Tower and the pending development of Atlantic Yards, the future home of the NBA Brooklyn Nets.

**David Berliner** is executive vice president and general counsel. He has worked at Forest City Ratner for 19 years. As general counsel, he directs and supervises all legal matters for the company's development projects as well as operating properties. Berliner can be reached at [DBerliner@frc.com](mailto:DBerliner@frc.com).

**Linda Chiarelli** is senior vice president and deputy director of construction. She previously served as the company's chief legal officer for construction, and as an associate general counsel in that department. A trained engineer, Chiarelli began her legal career at Ross & Cohen, LLP. She can be reached at [LChiarelli@frc.com](mailto:LChiarelli@frc.com).

**John Hunt** is an associate general counsel of Forest City Ratner. He counsels the company's construction and design development group on construction law, and is responsible for negotiating and drafting agreements with design professionals and construction firms, overseeing litigation and advising on insurance and risk management. Before arriving at Forest City nearly five years ago, he served in New York City's civil legal department and was then in private practice. He can be reached at [JHunt@frc.com](mailto:JHunt@frc.com).

His clients are less circumspect.

"We don't have a lot of litigation for a company our size. When we do have construction litigation, though, we turn to Duane Morris," says John Hunt, Forest City Ratner's associate general counsel. "They're really good; Allen commands respect from everyone in the construction bar. Everyone in the construction industry in New York



*David Berliner, Forest City Ratner Companies*

After cutting her teeth at Ross & Cohen, she became associate general counsel in Forest City Ratner's construction group. She later became that group's chief legal officer, before ultimately rising to deputy director of construction.



*John Hunt (left), Forest City Ratner Companies; Jose A. Aquino, Duane Morris LLP*

knows who he is. For as big as this city is, for as many billions of dollars go into construction here, there is just a small group of lawyers who handle this stuff expertly, and Allen is one of the best."

### Deep Connections

As in many longstanding partnerships, there are a lot of personal connections between Forest City Ratner and the Duane Morris lawyers. The prime example is Linda Chiarelli, who started as an associate at Ross & Cohen before going in-house.

An engineer by training, Chiarelli went to law school at night after deciding against a career on the design side.

"I was always interested in building," she says. "When you get out of engineering school, your choice is either to design buildings or to build buildings. I had worked the previous summer in a design firm and realized that it wasn't something I'd be happy doing forever. I'd be happier out on a project site, so that's the direction I went."

"One of the great things about being in-house here is you get to live through the project from the beginning to the end," she says. "You get to touch all the pieces of it, and when it's done, you really do consider that you were a part of the process."

Another connection between the firms lies in the fact that Hunt and Duane Morris Associate Jose A. Aquino both came out of New York's Office of the Corporation Counsel, the city's civil legal department. That common experience gives them a mutual respect and understanding of each other's work. It also means they speak the same language.

Aquino's expertise is on the mechanic's lien law, a New York statute that is integral to the state's construction process.

"What it does is allow the parties—the contractor, the sub-contractor, the sub-sub-contractor or even somebody who furnishes materials to the contractor—to put a lien against the project when they're owed monies," Aquino explains. "A lot of times

## Duane Morris LLP

Founded in 1904 by four partners in Philadelphia, today Duane Morris has 650 lawyers on three continents. In addition to offering full legal services, Duane Morris has independent affiliates employing approximately 100 professionals in other disciplines. With offices in major markets in the United States and internationally, Duane Morris represents clients across the United States and around the world.

**Allen J. Ross** has practiced construction, litigation and real estate law for more than 40 years. He is also skilled in alternative dispute resolution and frequently serves as an arbitrator, mediator and dispute review board chair in the construction industry. Peer Review Rated and widely regarded as a leader in New York City's construction bar, Ross joined Duane Morris in 2008. He can be reached at [ajross@duanemorris.com](mailto:ajross@duanemorris.com).

**Jose A. Aquino** is a commercial litigator who focuses on contracts and disputes under New York's mechanic's lien law. He has worked with Allen Ross since 1998. Prior to that, he was an assistant corporation counsel in New York City's law department. Contact him at [jaaquino@duanemorris.com](mailto:jaaquino@duanemorris.com).

"Many times you have legitimate disputes that are very difficult to solve," Aquino says. "You have a huge building going up; you have many different contractors interacting. Many times things aren't the way they seem on paper, or one trade may see things differently than another."

## Evolving Structures

Just a few blocks from the Brooklyn Bridge, a new tower is rising in lower Manhattan. Designed by the famed Frank Gehry, the Beekman Tower promises to be a major landmark. Under construction since October of 2006, the structure is nearly completed and awaiting its distinctive rippling skin.

commercial rights that came with it. Now the star architects are increasingly looking to retain some of those rights. They're looking to give the owner an irrevocable license to use the design of the building, but want to retain the copyright for themselves. We used to have simple contract questions with architects related to their work. We now have intellectual property questions also involved."

The Beekman Tower is also innovative in its mixture of uses. The 76-story building will contain market-rate rental apartments, retail and medical professional space, and a pre-K through 8th grade New York City public school.



"Beekman has a very interesting configuration—it has a wavy façade," says Hunt. "Instead of just pouring slabs with square edges and box columns, you have an unusual edge detail that flows out to where the curves are in the curtain wall. The construction becomes a bit more difficult."

The legal process presents some new wrinkles as well. Top architects today are celebrities with widely recognized brands, and with that comes intellectual property considerations.

"We never used to have any issues with respect to copyrights and licensing related to design," Ross explains. "The basic principle always was that the owner bought the design from the architect and received all the

"New York is really crying for schools," Chiarelli says. "That area in particular has had a boom in residential, so you have a need for schools. It ended up being a phenomenal fit to have the school at the bottom. Then we become a little less traditional in the architecture and have a little more fun with the top piece of the building.

"There was a lot of evolution in the design. The themes of the skin were maintained throughout the design process, but because of changes in the use of the building, a lot of structural changes were made along the way."

That's a common dynamic in the construction business, and a part of what makes a collaborative partnership so satisfying. ●

you'll have disputes between contractors, and they put liens against the project. My role is to oversee the entire process to remove the lien, whether through a surety bond or litigation against the contractor that filed the lien, in order to minimize delays in construction or even problems with financing for the project."

If not handled effectively, mechanic's lien claims can cause construction to grind to a halt. With each layer of contractors involved in a large project, the potential for disputes multiplies.