

A low-angle, upward-looking photograph of several classical columns, likely from a government building or courthouse. The columns are fluted and have ornate capitals. The sky is filled with dramatic, white clouds. The entire image has a blue color cast.

24-25

YEAR IN REVIEW

June 2024-June 2025

MCB

MARTIN CLEARWATER & BELL LLP
COUNSELORS AT LAW

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From the Executive Committee



ROSALEEN T. MCCRORY
Senior Trial Partner



THOMAS A. MOBILIA
Senior Trial Partner



MICHAEL A. SONKIN
Senior Trial Partner

Martin Clearwater & Bell LLP (MCB) continues to build on its legacy of excellence, marked by on-going efforts to identify appropriate cases for dispositive motions and early resolutions, while also meeting the challenges represented by the significant recent rise in trial activity. MCB continues to strive to meet the expectations of our clients by providing exceptional legal services and delivering results across all of our matters.

Over the past year, our legal team has achieved numerous successes, including a strong record in defense verdicts, summary judgment motions, dismissals, and appellate matters. Beyond the courtroom, we have negotiated favorable settlements, reinforcing our commitment to providing cost-effective representation while achieving positive outcomes.

One of the year's key milestones has been the addition of several highly skilled attorneys, including new partners whose diverse backgrounds and deep experience have enriched our firm. Their contributions have expanded our capabilities and allowed us to address increasingly complex legal challenges across our practice areas.

MCB has also made meaningful progress in enhancing client service through a range of initiatives. These include a mentoring program to support attorney development, educational sessions to keep our team informed on the latest legal trends, and CLE offerings for clients—particularly focused on developments in medical malpractice defense.

In summary, 2024–2025 has been a year of progress, performance, and growth. We have delivered strong legal outcomes, while investing in our attorneys' professional development. Looking ahead, we remain focused on delivering outstanding service, advancing client success, and upholding our reputation as a premier law firm in the Tri-State area.

113

YEARS IN BUSINESS

6

TRI-STATE LOCATIONS

40+

HOSPITALS AND ACADEMIC
MEDICAL CENTERS REPRESENTED

100+

NURSING HOMES
REPRESENTED

25+

INSURANCE CARRIERS
REPRESENTED

80+

ATTORNEYS

MCB WAS DESIGNATED BY
BEST LAW FIRMS® AS A TIER
1 NEW YORK FIRM IN FOUR
PRACTICE AREAS IN 2025:
HEALTH CARE LAW, AND
LEGAL MALPRACTICE LAW,
MEDICAL MALPRACTICE
LAW, AND PERSONAL INJURY
LITIGATION (DEFENDANTS).

MEDICAL MALPRACTICE:

DEFENSE VERDICTS

Defense Verdict Secured in Radiology Malpractice Case



SENIOR TRIAL PARTNERS THOMAS A. MOBILIA AND ARYEH S. KLONSKY

Nassau County Supreme Court

Allegation: A misdiagnosis resulted in unnecessary gallbladder removal surgery, and emotional distress.

This defense verdict was secured on behalf of MCB's clients, a NY based radiologist and his employer, a premier radiology practice. Prior to the verdict, the defense successfully obtained voluntary discontinuances against two other defendant radiologists.

The case involved a 58-year-old man who alleged misinterpretation of a series of abdominal ultrasounds identifying gallbladder polyps instead of benign gallstones, leading to unnecessary fear of cancer,

gallbladder removal, and increased bowel movements. Initial ultrasounds showed a 0.5 cm polyp and sludge. Follow-up imaging over two years revealed an enlarging polyp and new smaller polyps. The defendant radiologists recommended continued monitoring and surgical consultation. A non-party surgeon advised surgery if polyps grew to ≥ 1 cm due to cancer risk. Eight months later, imaging showed a 1.5 cm polyp, prompting surgery. Pathology later revealed only gallstones—no polyps.

Plaintiff alleged the radiologists misinterpreted all prior ultrasounds, and his expert claimed they showed gallstones, not polyps. The surgeon testified surgery was performed solely based on radiology

reports. Plaintiff argued the absence of polyps on pathology proved the surgery was unnecessary and the imaging was misread.

The defense maintained that ultrasound findings were consistent with polyps, not gallstones, and that pathology not identifying polyps does not mean imaging was misinterpreted. Ultrasound appropriately showed structures consistent with polyps that warranted monitoring and surgical referral.

After a two-week trial and two days of deliberation, the jury returned a defense verdict for both the radiologist and the radiology practice.

Defense Verdict Secured in High-Exposure ER Cardiac Monitoring Case



SENIOR TRIAL PARTNER MICHAEL A. SONKIN, SENIOR ASSOCIATE JOHN A. ROHAN, AND ASSOCIATE SHANNON L. STEWART

Bronx County Supreme Court

Allegation: Claims of medical malpractice that caused plaintiff's decedent to suffer cardiac arrest and reduced cardiac function.

This matter involved a then 22-year-old female who presented to the emergency room of MCB's insured client hospital reporting chest pain after an episode of nausea and vomiting at home. Upon arrival to the ER, a screening EKG was performed, which was negative for a STEMI or arrhythmia and was essentially normal, except for a mildly prolonged QT interval. The patient was triaged and assigned to a non-acute team, where she waited to be seen by an ER physician. After an extended wait of 10 hours - during which time she was monitored by nurses on three occasions and found to be stable

- she suffered a cardiac arrest. The arrest was quickly recognized and responded to, with successful resuscitation occurring within six minutes with no resulting neurologic sequelae. As a result of the arrest, cardiac testing was conducted, leading to the discovery of an underlying dilated cardiomyopathy that was previously unknown. Over the next two years, the patient's heart failure symptoms from the cardiomyopathy were managed with mixed success until she died suddenly two years later.

At trial, MCB successfully argued that any claim suggesting the hospital caused the decedent's death should be precluded, as there was no wrongful death claim filed. Moreover, it would be speculative to claim the arrest from two years earlier caused or contributed to her death, particularly

since she died in her sleep and no autopsy was ever performed. The primary alleged departure presented to the jury was of a failure to initiate continuous cardiac monitoring based on the claimed long QT discovered during the plaintiff's triage. However, the defense was able to convince the jury that the patient's elongated QT was only "borderline," with low risk for arrhythmia and arrest, and did not warrant continuous heart monitoring. Additionally, the patient's symptoms had improved over the 10 hours she waited to be seen, and that her arrest was actually caused by the then-unknown dilated cardiomyopathy and not her borderline QT. The plaintiff intimated to the jury he was seeking a verdict in the amount of \$10 million. After just one hour of deliberation, the jury returned a unanimous verdict in favor of the defense.

Defense Verdict in Attempted Suicide Case Following Discharge from Hospital



SENIOR TRIAL PARTNER JOHN J. BARBERA

Orange County Supreme Court

Allegations: Improper discharge from emergency department and failure to follow hospital protocol led to attempted suicide.

This case involved allegations of improper discharge by MCB's client, a psychiatrist, after a very cursory psychological examination, from the emergency department of MCB's client hospital after the plaintiff presented to the hospital with suicidal ideation. The plaintiff further alleged the hospital's employees did not follow protocol in discharging the plaintiff. Plaintiff argued that the aforementioned departures caused him to jump from an overpass onto a highway near the hospital shortly after discharge.

During the trial, Mr. Barbera established through his cross-examination of the plaintiff's expert psychiatrist that there were no indications for admission of the plaintiff to the hospital and that the plaintiff's feelings of suicidal ideation had dissipated during the emergency department presentation, which is consistent with the plaintiff's diagnosis of Borderline Personality Disorder. Mr. Barbera was also able to establish that in light of the extensive history between the client and the plaintiff through years of treatment, he had enough information to make an informed decision to discharge the plaintiff from the hospital. During plaintiff's cross-examination, it was established that even after he was discharged, he did not have any intention

of killing himself. On cross-examination of not only the plaintiff, but also his aunt, Mr. Barbera established that following the plaintiff's discharge, in a phone call to his aunt, he felt rejected since he was no longer welcome in her home and could not find housing elsewhere, which caused him to attempt to take his own life.

Mr. Barbera was able to establish through the testimony of MCB's client and defense expert that the discharge plan was proper, as it would allow the plaintiff to continue his outpatient treatment with his psychiatrist in the community, which is the standard of care for the treatment of patients with Borderline Personality Disorder. It was, therefore, appropriate for the hospital to discharge the plaintiff.

Defense Verdict Achieved in PID/TOA Case



SENIOR TRIAL PARTNER DANIEL L. FREIDLIN, PARTNER ELIZABETH J. SANDONATO, AND ASSOCIATE KELEISHA A. MILTON

Nassau County Supreme Court

Allegation: Failure to timely diagnose and treat pelvic inflammatory disease/ tubo-ovarian abscess (PID/TOA) led to additional surgeries.

In this matter, a then 41-year-old woman with two children alleged that our clients, an OB/GYN and Family Nurse Practitioner, failed to timely diagnose and treat pelvic inflammatory disease/ tubo-ovarian abscess (PID/TOA). Plaintiff alleged a two month delay in diagnoses led to the need for a hysterectomy and bilateral salpingo-oophorectomy.

On January 22, 2019, plaintiff presented to the codefendant Hospital with complaints of left lower quadrant pain. CT scan showed a 2.2 cm. cystic lesion in the left adnexa with severe inflammation that favored PID/TOA over colitis. Transvaginal ultrasound noted no specific pathology and a 1.7 cm. follicular cyst. GYN

consult found no cervical motion tenderness or mucopurulent discharge, concluding a low likelihood of PID. Gastroenterology consult diagnosed mild colitis. Plaintiff was discharged with a diagnosis of colitis.

On January 25, 2019, plaintiff had an in-office hospital follow-up visit with the FNP wherein she reported she was doing well and an abdominal examination was benign. Plaintiff was directed to continue antibiotics, follow up with GI, and return if symptoms worsened. Plaintiff alleged the FNP failed to perform a pelvic exam, order a repeat white count and repeat imaging, and failed to rule out PID/TOA.

After evaluations by several healthcare providers, including discontinuation of antibiotics by GI, on February 25, 2019, plaintiff returned to our OB/GYN client after repeat CT scan showed a 4.6 cm. cystic lesion. The OB/GYN noted cervi-

cal, uterine, and adnexal tenderness, prescribed oral antibiotics, and referred plaintiff to a GYN surgeon. Plaintiff alleged admission and IV antibiotics were required.

Seventeen days later, the GYN surgeon found a benign exam and a 4.1 cm dermoid cyst. MRI was ordered and follow-up was recommended. Eight days later, plaintiff returned with acute pain; MRI showed partial rupture of the TOA. Plaintiff underwent hysterectomy and salpingo-oophorectomy.

At trial, we argued the initial lesion was a follicular cyst and the later one was a dermoid cyst. The FNP met the standard of care and the OB/GYN appropriately referred the patient. The surgeon did not act emergently, and neither should have MCB's clients. The jury returned a defense verdict.

Defense Verdict in Spinal Surgery Case



SENIOR TRIAL PARTNER CHRISTOPHER A. TERZIAN AND PARTNER VICTOR M. IVANOFF

Suffolk County Supreme Court

Allegation: Failure to timely and properly treat a cerebral spinal fluid leak resulted in pain and disability.

In this case, the plaintiff alleged MCB's client, a spine surgeon, failed to timely and properly treat a cerebral spinal fluid leak that allegedly occurred after he performed a successful right L4 – L5 decompressive laminectomy on May 15, 2015, to relieve the plaintiff's right lower extremity sciatica. Plaintiff's counsel asked the jury to award his client a total of \$6.7 million.

The plaintiff claimed that our client re-operated three weeks later at the wrong spinal level to address a CSF leak. Mr. Terzian and expert witnesses in neuroradiology and neurosurgery demonstrated, using a model of the initial operation and subsequent MRI films, that

our client did indeed re-operate at L4 – L5, the appropriate level, to investigate the CSF leak. The defense further established that despite not visually confirming a CSF leak during the operation, our client applied a glue-like substance in and around the dura of the spinal canal at L4 – L5 as a precaution against an undetectable intermittent leak. At the time, there was a collection of presumed CSF, expected postoperative fluid, and a seroma present at L4 – L5.

Several weeks later, our client placed a drain in the plaintiff's spinal canal at L4 – L5 to reduce CSF pressure, facilitating potential healing and sealing of any dural tear causing intermittent leakage. The drain effectively reduced and stabilized the collection of presumed CSF and seroma, relieving the plaintiff's symptoms for approximately four months. A subse-

quent MRI in November 2015 indicated a slight decrease in the fluid collection at L4 – L5 with no evidence of communication with the spinal canal.

Despite our client's offer for further treatment to explore the recurrence of CSF leak symptoms, the plaintiff declined and sought treatment from pain medicine specialists, neurologists, a chiropractor, an interventional radiologist and ultimately another neurosurgeon over the following months. The defense successfully demonstrated that a subsequent surgery in May 2016 by another neurosurgeon, aimed at repairing a newly diagnosed CSF leak, resulted in the plaintiff developing cauda equina syndrome and arachnoiditis, conditions unrelated to our client's initial care, which ultimately caused the plaintiff's pain and disability.

Defense Verdict Secured in Bronx Nerve Injury Case



SENIOR TRIAL PARTNER JEFF LAWTON, SENIOR ASSOCIATE JENNIFER M. WANNER, AND LAW CLERK JESSICA H. RAMSAWAK

Bronx County Supreme Court

Allegation: Surgical negligence was the cause of spinal nerve root injury.

In this matter, the plaintiff underwent a minimally invasive microdiscectomy for a left sided disc herniation at L4-L5 performed by two board-certified anesthesiology/pain management physicians. Postoperatively, the plaintiff had a nerve root injury at L-5 on the right side, which was documented in an abnormal

MRI and EMG. MCB defended that the nerve root injury was a known risk and complication to the surgery, which the plaintiff was told about in a documented informed consent. The plaintiff seemed to slowly recover, and during litigation, the plaintiff's social media was obtained which showed photographs and videos of the plaintiff engaged in activities inconsistent with her claimed injuries, including walking without a cane, wearing high heels, swimming, and dancing in a club.

MCB exchanged photographs and videos with a Notice to Preserve, only to have the plaintiff change her social media settings from public to private in an ill-fated attempt to hide them. The plaintiff's counsel was undeterred given the Bronx venue and in summation asked the jury for \$5.7 million. After a two-week trial, the jury deliberated in less than two hours on five liability issues and returned a defense verdict for MCB's client physicians.

Appellate Division Affirms Judgment Entered Pursuant to Defense Verdict in Complex Medical Malpractice Suicide Case



RETIRED SENIOR TRIAL PARTNER SEAN F.X. DUGAN, APPELLATE PARTNER BARBARA D. GOLDBERG, AND PARTNER MICHAEL B. MANNING

Westchester County Supreme Court

Allegations: Multiple claims of inadequate and improper psychiatric care led to patient suicide.

In a case that was a major success for our Firm and its appellate team, a defense verdict was secured on behalf of MCB's client hospital in a complex medical

malpractice action involving significant damages exposure. The case involved allegations of improper administration of psychotropic medications and failure to

recommend appropriate follow-up care post-discharge. Following the verdict, Appellate Partner Barbara D. Goldberg and Mr. Manning defeated the plaintiff's motion to set aside the verdict, and Ms. Goldberg later secured an affirmance on appeal—concluding a case pending since 2014.

The wrongful death action alleged that psychiatric care provided during multiple admissions from 2008 through a final hospitalization in 2012 contributed to the decedent's suicide. Plaintiff

claimed a continuous course of negligent treatment, seeking to toll the statute of limitations and put all admissions at issue. In March 2020, following trial, the jury rejected the continuous treatment theory, limiting the case to the final hospitalization, and found the hospital did not depart from good and accepted medical practice—resulting in a full defense verdict.

Plaintiff moved under CPLR 4404(a) to set aside the verdict or obtain a new trial. In a June 29, 2020 Order, the court denied

the motion. Judgment was entered in favor of the hospital on November 6, 2020. On appeal, Ms. Goldberg successfully defended against claims of evidentiary error and weight-of-evidence challenges. In a May 28, 2025 Decision and Order, the Appellate Division affirmed, finding the trial court acted within its discretion and that the defense verdict was supported by a fair interpretation of the evidence.

Unanimous Defense Verdict Achieved in Orthopedic ACL Graft Surgery



SENIOR TRIAL PARTNER CHRISTOPHER A. TERZIAN

Richmond County Supreme Court

Allegation: Improperly performed hamstring tendon graft surgery resulted in unnecessary second surgery and future complications.

In this matter, the plaintiff, a 17-year-old Division I college soccer player, tore her left anterior cruciate ligament (ACL) in a game on September 10, 2017, against a rival college. MCB's client, an orthopedic surgeon, performed surgery to remove her torn ACL on October 4, 2017, replacing it with a hamstring tendon graft. The plaintiff alleged our client negligently placed the tendon graft, causing it to be lax instead of taut.

Approximately eight months after the surgery, our client cleared the plaintiff to return to college level soccer, after she successfully completed her rehabilitation program without any complications. However, instead of returning to college soccer, the plaintiff sought the opinion of another orthopedist, based on the advice

of a physical therapist, who believed the tendon graft was loose and not taut. One month later, the plaintiff elected to have the tendon graft, placed by MCB's client removed by another orthopedic surgeon and replaced by a patella tendon graft.

About one year after the surgery by the subsequent surgeon, plaintiff was cleared to return to playing soccer. However, she then tore the subsequent surgeon's patella tendon graft playing soccer. The plaintiff argued that she underwent unnecessary surgery by the second surgeon due to the alleged improperly performed hamstring tendon graft surgery performed by our client. Additionally, the plaintiff claimed she would suffer a lifetime of early onset osteoarthritis in her left knee, along with accompanying pain, swelling, and immobility due to the alleged negligence of our client. Plaintiff sought \$1 million in damages.

During the trial, Mr. Terzian, through his expert orthopedic surgeon and client,

proved the tautness and stability of our client's hamstring tendon graft through postoperative arthroscopic images of our client's graft, preoperative arthroscopic images of our client's graft before it was removed by the second surgeon, and preoperative MRIs of plaintiff's left knee before the second surgeon removed the graft placed by our client. Mr. Terzian and his witnesses also proved to the jury that any current knee problems plaintiff now has are due to her original knee injury, when she not only tore her left ACL, but also sustained bone fractures, bone bruises, and tears and sprains of other ligaments. Based upon this evidence, the jury found the graft placed by our client was properly positioned, straight, taut, and not lax before it was removed by the second surgeon. The jury rendered a unanimous defense verdict in under an hour.

Defense Verdict Secured in Orthopedic Treatment Case



PARTNER MICHAEL J. BORANIAN, OF COUNSEL ANDREW W. ZARRIELLO, AND ASSOCIATE TIMOTHY M. O'TOOLE

Queens County Supreme Court

Allegation: Failure to properly advise and communicate the X-ray findings of a calcaneal cyst.

This matter involved a then 14-year-old plaintiff who presented to MCB's client, an orthopedist, with a sprained ankle and a documented osteochondritis dissecans (OCD) lesion at the talus. The plaintiff had previously seen two orthopedists and undergone a July 2014 MRI. MCB's client examined her, took X-rays, confirmed and treated the OCD lesion, and discharged her after casting. She

resumed competitive basketball and did not seek further treatment until nearly two years later, when another physician in the group again diagnosed a sprained ankle. A new MRI showed the same OCD lesion and, for the first time, a left calcaneal cyst—referencing a “tiny” cyst seen on the 2014 MRI but not previously diagnosed. The plaintiff later underwent curettage and bone grafting by another surgeon but received no follow-up care between August 2017 and March 2025.

At trial, plaintiff alleged the defendant failed to advise her of the cyst in 2014.

MCB's client maintained the cyst was benign, asymptomatic, not noted on the 2014 MRI, and that he was entitled to rely on those radiology findings. Through expert testimony and cross-examination, we established that MRI is the more sensitive diagnostic tool, the physician could rely on the MRI findings, and no objective signs of heel pain were documented. The OCD lesion had been appropriately treated.

After two hours of deliberation, the jury returned a unanimous verdict for MCB's client.

Unanimous Defense Verdict in \$25 Million Wrongful Death Case



SENIOR TRIAL PARTNER CHRISTOPHER A. TERZIAN

Orange County Supreme Court

Allegation: Wrongful death due to patient mismanagement in hospital Labor & Delivery PACU.

In this case, Senior Trial Partner Christopher A. Terzian achieved a unanimous Jury verdict for the defense in Supreme Court, Orange County, in a wrongful death case involving allegations of patient mismanagement by MCB's client anesthesiologist in the Labor and Delivery PACU of the codefendant hospital following an emergency cesarean section delivery by the codefendant obstetrician, who settled before trial. The plaintiff alleged that the decedent mother died due to the malpractice of MCB's client and the hospital's nursing staff.

During the trial, Mr. Terzian established, through cross-examination of plaintiff's expert critical care physician and expert anesthesiologist, that the settling obstetrician committed medical malpractice by failing to recognize a complication from her emergency C-section, which caused the decedent to experience intra-abdominal bleeding and, ultimately, death.

The plaintiff's experts also conceded on cross-examination that the obstetrician's malpractice was the primary cause of the young mother's death. As a result of this testimony, Mr. Terzian was able to obtain a directed verdict against the settling obstetrician, which allowed for an instruction on the verdict sheet to the jury that the Court had determined the obstetrician had deviated from the standard of care, and that her negligence had proximately caused the decedent's death.

Mr. Terzian also established, through his direct examination of his expert anesthesiologist and expert critical care physician, that our client anesthesiologist's treatment was within the standard of care, and there were no signs of intra-abdominal bleeding after our client's care was rendered.

Plaintiff argued that our client anesthesiologist was part of a team of physicians managing the decedent, and should have suspected intra-abdominal bleeding and advised the settling obstetrician so she could perform surgery to address same. Mr. Terzian established the an-

esthesiologist was not part of a team of physicians but that the patient was being managed exclusively by the codefendant obstetrician. Mr. Terzian also established the obstetrician considered on her differential diagnosis intra-abdominal bleeding, but failed to appreciate the need to return the decedent to the operating room for an emergency exploratory laparotomy. The decedent experienced a cardiac arrest about four hours after the C-section due to severe blood loss, and died nine days later.

The jury also rendered a defense verdict in favor of the codefendant hospital on claims of direct liability for nursing care and vicarious liability for the care by MCB's client anesthesiologist.

On summation, plaintiff's counsel sought a total damages award of \$25 million which included conscious pain and suffering and pecuniary loss. After deliberating for a mere 30 minutes, the jury rendered a unanimous verdict in favor of both defendants.

Directed Verdict Achieved and Affirmed in Postoperative Complication Case



PARTNER MICHAEL J. BORANIAN

Queens County Supreme Court

Allegation: Departure from the standard of care led to blood clot, ultimately requiring leg amputation.

This matter involved the care provided by Mr. Boranian's client hospital and its critical care specialist to a then 30-year-old female patient, who had been transferred from a codefendant hospital. After determining that the plaintiff was stable, the decision was made by the co-defendant surgeon to wait until the morning to perform surgery, while the surgeon remained in the hospital overnight. The surgeon instructed staff to notify him of any changes in the patient's condition. At one point, the plaintiff's blood pressure dropped, but the surgeon was not

notified. Upon learning of the change, the surgeon did not immediately operate. Postoperatively, the plaintiff developed a blood clot, which ultimately necessitated a leg amputation. At trial, the plaintiff's expert testified that hospital staff departed from the standard of care by failing to notify the surgeon of the drop in blood pressure and the change in the plaintiff's condition. However, no evidence was adduced at trial to show that the codefendant surgeon would have intervened earlier had he been notified of the change in the plaintiff's condition. At the close of the plaintiff's case, Mr. Boranian moved for a directed verdict, arguing that the plaintiff had failed to establish proximate cause, as there was no evidence from which the jury could have inferred that

the surgeon would have intervened sooner if he had been informed of the change in the plaintiff's condition. After considerable argument, the trial court granted the motion and granted the motion for a directed verdict. After continuing with the trial and reaching a significant settlement with the remaining defendants, the plaintiff appealed the granting of the directed verdict. On appeal, the Second Department affirmed the trial court's decision, agreeing with Mr. Boranian's arguments that the requisite connection between the alleged departure and plaintiffs' injuries had not been established. The Court concluded that any decision against his client would have been based purely on speculation.

Defense Verdict in Bariatric Surgery Case



SENIOR TRIAL PARTNER CHRISTOPHER A. TERZIAN AND PARTNER VICTOR M. IVANOFF

Nassau County Supreme Court

Allegations: Improperly performed bariatric surgery and inadequate amount of information given for informed consent.

In this high exposure case, the plaintiff asked for \$2.5 million, alleging physical harm from MCB's client doctor's negligence. The plaintiff, a 64-year-old obese woman, sought laparoscopic gastric sleeve surgery after attending the defendant surgeon's seminar and consulting him in May of 2016. During the initial visit, the doctor explained the risks, benefits, and potential complications, including removal of half her stomach. The plaintiff had prior open abdominal surgery seven years earlier, causing adhesions. She claimed she never received the pamphlet outlining bariatric surgery risks, including organ injury, and alleged

the doctor failed to warn her of her increased risk of bowel perforation. The plaintiff signed and initialed a detailed three-page consent form documenting risks and completed a three-page questionnaire on the surgery.

Over seven months, the plaintiff underwent pre-surgical testing, including psychological evaluation, upper GI series, and cardiac, pulmonary, and internal medicine clearances. She also had a second visit 12 days before surgery, where the doctor addressed her concerns.

During the laparoscopic sleeve gastrectomy, the doctor nicked the outer layer of the large bowel adjacent to the stomach—a known procedural risk. Plaintiff's counsel argued she was at higher risk due to adhesions that had to be removed. The doctor repaired the serosal injury and completed the surgery, warning the pa-

tient of possible additional procedures. Two days later, signs of infection prompted a second laparoscopic surgery, where a bowel perforation near the original injury was repaired, and infected material cleared. The plaintiff was hospitalized for four weeks with IV antibiotics, intubation, and abdominal drains. After discharge, she was briefly hospitalized again for fecal impaction and abdominal drainage with antibiotics before returning home with no further complications.

The plaintiff's experts—a bariatric surgeon and infectious disease physician—claimed the doctor failed to obtain informed consent and improperly repaired the injury laparoscopically. The bariatric expert argued open surgery would have allowed better repair and shorter hospitalization. The infectious disease expert said abdominal fluid should have been

cultured during surgery and criticized postoperative care, recommending additional antibiotics.

The defense experts testified that informed consent was adequate, the laparoscopic surgeries were properly per-

formed, and open surgery would have caused more harm, including severe adhesions, risk of bowel obstruction, a large scar, risk of infection, and a longer hospitalization. The infectious disease expert confirmed the antibiotics and postoperative care met accepted standards.

Mr. Terzian and his experts convinced the jury the client doctor's care met accepted bariatric surgery standards. The jury returned a defense verdict. ■

APPELLATE ALERT

Published by the Appellate Practice Group at Martin Clearwater & Bell LLP

Partner and Head of the Appellate Practice Group **BARBARA D. GOLDBERG** and Partner **RICHARD WOLF**

New York's Medical Indemnity Receives a Temporary Fund Boost



As of May 9th 2025, Governor Kathy Hochul approved \$211 million in funding to the Medical Indemnity Fund (MIF) for the upcoming 2025 fiscal year. On May 11th, the \$211 million appropriation was approved by the legislature as part of the State budget.

This funding amount is sufficient to allow the MIF to continue enrolling new members at the present time. However, based on the State's previous projections, it may result in the MIF's assets dropping below the 80% funding level before the next budget cycle. If this occurs, the MIF will once again be required to close to new enrollment, as it did in 2024. The Governor and Legislature are expected to pursue a long-term strategy for the Fund's sustainability.

To learn more about our appellate practice or to receive appellate updates, please contact Barbara D. Goldberg at (212) 916-0989 or goldbb@mcblaw.com.

MEDICAL MALPRACTICE:

SUMMARY JUDGMENTS

Summary Judgment Granted in Cancer Recurrence Case



SENIOR TRIAL PARTNER ROSALEEN T. MCCRORY AND PARTNER SAMANTHA E. SHAW

*New York County Supreme Court***Allegation:** Departure from the standard of care resulted in a delayed diagnosis of renal cell carcinoma.

This matter centered around allegations that MCB's client oncologist doctor and hospital failed to monitor for cancer recurrence, resulting in delayed diagnosis of incurable stage IV renal cell carcinoma (RCC). Plaintiff also asserted claims for lack of informed consent, vicarious liability, and negligent hiring/supervision.

Plaintiff began treatment with MCB's client in 2013 for diffuse large B-cell lymphoma following small bowel resection. He received PET/CT imaging and R-CHOP chemotherapy. A 2014 post-treatment scan showed no evidence of disease. From 2014 to 2019, plaintiff attended follow-ups with decreasing frequency. At each visit, the oncologist performed physical exams,

lab work, and addressed non-specific symptoms including fatigue, neuropathy, and bowel issues. By the final October 2019 visit, there was no clinical evidence of recurrence, and plaintiff was referred to his PCP and other specialists to address the non-specific complaints.

In January 2020, plaintiff's PCP noted plaintiff's complaints and referred him for a second oncology opinion. Ultimately, plaintiff was referred for imaging, which led to a diagnosis of metastatic RCC. Plaintiff alleged MCB's clients failed to perform post-chemotherapy surveillance images despite his complaints and repeated requests for imaging.

MCB moved for summary judgment, supported by an oncology expert, arguing that the oncologist appropriately monitored for lymphoma recurrence, RCC was unrelated, and imaging was not indicated

in the absence of specific signs of recurrence. MCB also argued that physicians are not liable for failing to detect unrelated conditions incidentally.

MCB further contended that informed consent was obtained for R-CHOP, not required for routine follow-up, and that vicarious liability was inapplicable as the doctor was not a hospital employee. There was no evidence supporting negligent hiring or supervision.

Plaintiff's expert claimed periodic surveillance imaging was required to monitor lymphoma and would have revealed RCC at a curable stage. The Court rejected this theory and granted summary judgment, finding MCB's client met the standard of care and could not be held liable for failure to detect an unrelated condition.

Summary Judgment Obtained in Hysterosalpingogram Case



SENIOR TRIAL PARTNERS THOMAS A. MOBILIA AND JACQUELINE D. BERGER, AND SENIOR ASSOCIATE STEPHEN C. LANZONE

*Kings County Supreme Court***Allegation:** Negligence in failing to administer antibiotics before, during, or after a hysterosalpingogram, led to a pelvic infection requiring the removal of a fallopian tube and ovary.

This case concerned the performance of a hysterosalpingogram (HSG) by MCB's client doctor, an interventional radiologist, at MCB's client Medical Center, upon referral by the plaintiff's two private treating codefendant gynecologists. During the procedure, a hydrosalpinx was di-

agnosed. The plaintiff later developed a pelvic infection, resulting in removal of the affected fallopian tube and one ovary. Plaintiff alleged all defendants failed to provide antibiotics before, during, and/or after the HSG.

MCB moved for summary judgment, arguing its clients' duties were limited to performing the HSG and timely sending results to the referring physicians. As the consulting interventional radiologist, we argued that MCB's clients properly deferred all medication decisions to the private gynecologists, who were familiar

with the plaintiff's medical history. MCB asserted its client reasonably relied on the codefendants to fulfill their duties after the report was timely sent to them.

The Court granted MCB's motion in its entirety, finding the interventional radiologist and the Hospital met the standards of care and that plaintiff's expert failed to address the limited role of a consulting interventional radiologist.

Summary Judgment Secured in Pressure Ulcer Case



SENIOR TRIAL PARTNER JOHN J. BARBERA, PARTNER DEBORAH A. DYCKMAN, AND ASSOCIATE EMILY N. GALVEZ

Westchester County Supreme Court

Allegations: Mismanagement of patient's pressure ulcers and failure to obtain informed consent.

This matter centered around allegations that MCB's client doctor failed to prevent or treat the plaintiff's pressure ulcers. The plaintiff resided at an assisted living facility from October 19, 2021, through April 28, 2022, under the care of a codefendant doctor, a wound care specialist. The plaintiff was later hospitalized on June 6, 2022 and transferred to another hospital on June 10, 2022. He expired on July 1, 2022.

The Plaintiff claimed MCB's client doctor failed to obtain informed consent, failed to transfer the patient to a facility capable of providing proper care, and was liable under *res ipsa loquitur*. The Court dismissed all such claims and agreed that the allegations against MCB's client were misdirected and actually related to the wound care consultant and facility staff. MCB's expert affirmed that MCB's client doctor, who served solely as an internist, had no role in wound or nursing care, and that the patient's underlying health conditions contributed to his decline and death.

The Plaintiff's expert argued—without having pled it in the Bill of Particulars—that MCB's client doctor inappropriately approved the decedent's admission to assisted living. MCB submitted a supplemental expert affirmation clarifying that an outside physician has no role in admission decisions. Ultimately, the Court found MCB's client met the burden for summary judgment and that plaintiff's expert opinions were speculative and unsupported.

Summary Judgment Secured in Pulmonology Case



SENIOR TRIAL PARTNER DANIEL L. FREIDLIN, PARTNER NICOLE S. BARRESI, SENIOR ASSOCIATE CASEY M. HUGHES, AND ASSOCIATE ASHLEY M. MULLINGS-MARAGH

Nassau County Supreme Court

Allegation: Departure from the standard of care caused a delay in the diagnosis of lymphoma.

This matter involved a young married woman who presented to our client pulmonologist in October 2012 for management of an incidentally seen sub-centimeter nodule on CT scan. The patient was a smoker and had a family history of lymphoma. Our client evaluated the patient over the next sixteen months, including ordering serial CT scans to monitor the nodule for stability. Plaintiff did not return after December 2013.

The patient was evaluated by several physicians over the next six years, including

our codefendant internists. On January 22, 2020, the patient underwent a CT scan ordered by another physician. The CT scan showed multiple airspace consolidations for which neoplasm could not be excluded. She returned to our client pulmonologist, who ordered antibiotics to rule out multifocal pneumonia. He also ordered a repeat CT scan three weeks later to ensure the areas had not changed. After discussing the results and plan, she elected to transfer care to another pulmonologist. Three months later, the patient was diagnosed with lymphoma.

MCB moved for summary judgment arguing that the care rendered in 2012 and 2013 was appropriate, as the standard of care for incidentally identified lung

nodules is to perform serial CT scans to confirm stability. We also argued plaintiff's claims were barred by the statute of limitations and that Laverne's Law did not apply. Regarding the 2020 care, we argued it conformed to the standard of care, as appropriate management for airspace consolidations seen on CT is to first order antibiotics to rule out pneumonia followed by repeat imaging to evaluate changes. The Court agreed and dismissed the case against our client pulmonologist in its entirety.

Summary Judgment Secured in High-Exposure Wrongful Death Case



SENIOR TRIAL PARTNER MICHAEL F. MADDEN AND PARTNER AMY E. KORN

Queens County Supreme Court

Allegation: Negligence in the treatment of cardiac patient caused wrongful death.

This case involved a 30-year-old morbidly obese male diagnosed with pulmonary embolism and non-ischemic cardiomyopathy during a hospital admission. After discharge, he was managed as an out-

patient by MCB's defendant cardiologist and later passed away.

Plaintiffs alleged a failure in proper cardiac monitoring, and failure to place an implantable cardioverter defibrillator. MCB moved for summary judgment, presenting expert affirmations and medical records demonstrating that all defendants acted within the standard of care and there was no clinical indication for

an implantable cardioverter defibrillator. MCB further demonstrated that plaintiff's contention that the placement of an implantable cardioverter defibrillator would have prevented the patient's cardiac arrest was speculative. The Court agreed and summary judgment was granted in full, dismissing all claims with prejudice – a strong and complete victory for MCB in a complex, high-stakes case.

Summary Judgment Obtained in Diverticulitis Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO AND PARTNER MICHAEL B. MANNING

Rockland County Supreme Court

Allegation: Failure to timely diagnose and treat diverticulitis resulted in numerous complications and the need for a Hartmann's Pouch.

This matter involved claims that MCB's client hospital failed to timely diagnose and treat diverticulitis, resulting in a rupture, colon perforation, purulent peritonitis, sepsis, emergency laparoscopic sigmoid colectomy, colostomy, and the creation of a Hartmann's Pouch.

MCB moved for summary judgment with support from a board-certified gastroen-

terologist, arguing that the hospital and its staff provided care consistent with accepted medical standards and that their treatment did not proximately cause the plaintiff's injuries. MCB also argued the hospital could not be held vicariously liable for care rendered by the plaintiff's private gastroenterologist or the codefendant radiologist.

MCB's expert opined that the plaintiff's diverticulitis was appropriately diagnosed, monitored, and treated, and remained uncomplicated until July 13, 2017, when a perforation occurred despite proper therapy, including antibi-

otics. The expert concluded the perforation was unrelated to any alleged delay or mismanagement by hospital staff.

After the motion was fully submitted, plaintiff's counsel moved to be relieved. The pro se plaintiff was given time to retain new counsel or respond but failed to do so. The Court granted summary judgment, finding MCB established a prima facie showing that the care met accepted standards and did not cause plaintiff's injuries. The plaintiff failed to submit any evidence to rebut these findings, and the complaint was dismissed in its entirety.

Summary Judgment Secured in High-Stakes Ulcerative Colitis Vision Loss Case



SENIOR TRIAL PARTNER JACQUELINE D. BERGER, APPELLATE PARTNER BARBARA D. GOLDBERG AND PARTNER KERONA K. SAMUELS

Queens County Supreme Court

Allegation: The failure to properly treat, diagnose and monitor patient caused severe injury and blindness.

In this case, the plaintiff alleged, against multiple defendants, that they failed to properly treat, monitor, diagnose and care for a then 54-year-old married woman, causing severe and significant injury, including blindness. The claims as to

MCB's client ophthalmologists, who were consulted after the patient presented to an Emergency Department with complaints of a sudden development of obstruction of vision in her left visual field and blood in her stool, centered around a failure to timely suspect that ulcerative colitis was causing internal bleeding and ischemia to the optic nerves, a failure to properly and timely examine the patient, and a failure to treat the patient's condi-

tion as an emergency. After bringing a summary judgment motion, dismissal was granted as to one of our client ophthalmologists involved during the admission at issue. The Court found that there were no issues of fact raised by plaintiff's expert regarding a departure from the standard of care, nor did this one ophthalmologist's care and treatment result in any injury to the plaintiff.

Summary Judgment Secured: Expert Analysis Confirms Appropriate Delivery Management



SENIOR TRIAL PARTNERS THOMAS A. MOBILIA AND YUKO A. NAKAHARA, AND SENIOR ASSOCIATE STEPHEN C. LANZONE

Queens County Supreme Court

Allegation: Occurrence and mismanagement during delivery caused injury to infant.

In this case, the plaintiffs alleged that the defendants mismanaged shoulder dystocia during the delivery of the infant-plaintiff, causing a clavicular fracture and possible brachial plexus injury. MCB represented the nurse midwife and OB/GYN resident involved in the delivery, as well as the hospital.

MCB moved on behalf of all its clients, submitting an expert's affirmation, detailing

how defendants appropriately, in accordance with applicable standards of care, managed the delivery and utilized all appropriate positions and maneuvers to timely deliver the infant when shoulder dystocia was encountered. The defense expert further opined the infant's claimed injuries were proximately caused by the natural forces of labor, especially in the setting of a rapid descent, and not by the medical care rendered by MCB's clients, which was at all times appropriate.

The Court found that defendants made a prima facie showing of entitlement to

summary judgment. Although plaintiffs submitted an expert's affirmation in opposition, the Court accepted our arguments that plaintiffs' expert's opinion on both liability and causation was impermissibly speculative and conclusory. The plaintiffs also attempted to raise new theories of liability for the first time in their expert's affirmation in opposition to summary judgment. In reply, we cited the long line of cases deeming such conduct impermissible. The Court agreed and granted our motion in its entirety.

Summary Judgment in Hospital Pressure Ulcer Case



SENIOR TRIAL PARTNER ROSALEEN T. MCCRORY AND PARTNER ELIZABETH J. SANDONATO

Kings County Supreme Court

Allegations: Deviation from the standard of care and gross negligence caused pressure ulcers.

This matter centered around the care rendered to the plaintiff's decedent, a single 88-year-old male, during admission at MCB's client hospital. The decedent's medical history included dementia, hypertension, kidney disease, seizures, cerebral aneurysm and heart failure. A long-term resident of the non-moving codefendant nursing home, the decedent was transferred to MCB's client hospital for evaluation of abdominal pain and fever and was diagnosed with a UTI and sepsis/acute cholecystitis and underwent PEG placement.

On admission, the initial assessment was negative for skin breakdown. However, during the admission, the decedent developed four Stage II pressure ulcers on the coccyx, bilateral buttocks, and scrotum, which were documented at dis-

charge. Upon re-admission to the codefendant nursing home, an initial nursing assessment identified an unstageable sacral pressure ulcer and an unstageable right heel pressure ulcer. Three weeks later, the decedent was admitted to a non-moving codefendant hospital for two weeks. He returned to the codefendant nursing home for another 26 days where the records suggested he developed seven pressure ulcers and then returned to the non-moving codefendant hospital for over one month. Upon his return to the codefendant nursing home, the decedent was noted to have 23 pressure ulcers. He died four days after his return to the codefendant nursing home.

The Court granted MCB's summary judgment in full. The Court held that we established a prima facie case showing no deviation from accepted hospital practice and no causal link between the alleged malpractice and injury. The record confirmed proper treatment of the ulcers and other conditions, including

timely repositioning and use of a specialty mattress. Much of the hospital's entitlement to summary judgment was supported by the expert physician's affirmation. No evidence supported allegations of carelessness, recklessness, or gross negligence. Plaintiff failed to establish material issues of fact. Their expert did not assess the issue of the standard of care with respect to the specific facts of the decedent's entire condition during his hospitalization. Allegations made by the plaintiff's expert were refuted by documentary evidence. The plaintiff raised new theories of liability not asserted in the Bill of Particulars and there was an insufficient rebuttal of our prima facie showing as to the wrongful death cause of action and the res ipsa loquitur claims. Additionally, no wanton indifference was shown to support any claims of gross negligence and punitive damages.

Summary Judgment Secured in Retinal Surgery Case



SENIOR TRIAL PARTNERS THOMAS A. MOBILIA AND ARYEH S. KLONSKY

Nassau County Supreme Court

Allegations: Failure to obtain informed consent, ophthalmic surgery negligence, and failure to ensure all necessary surgical equipment was available for use at the time of the operation.

In this case, the plaintiff alleged that MCB's client, a vitreoretinal surgeon, negligently recommended and performed epiretinal membrane peel surgeries on her right eye—without consent—on October 9, 2018, and December 20, 2018, and again on her left eye on March 26, 2019. MCB also represented the ambulatory surgery center where the procedures occurred. Plaintiff further alleged the center was negligent for not having the necessary surgical instruments available during the first surgery.

After the initial surgery was unsuccessful, our client recommended repeating the procedure with a different surgical instrument. Plaintiff secretly recorded a postoperative discussion and claimed the video proved that necessary pre-operative testing was not done and that informed consent was not obtained.

MCB moved for summary judgment, supported by an expert vitreoretinal surgeon, who opined that our client appropriately recommended and performed the surgeries, properly obtained informed consent, and that the surgery center had all necessary instruments and equipment. The expert further opined that the plaintiff's injuries were not proximately caused by the alleged malpractice. In opposition, plaintiff submitted an affirmation from a general ophthalmologist, who claimed negligence due to failure to measure axial length prior to surgery and failure to obtain informed consent—asserting this caused permanent visual disturbances.

In reply, we argued that the plaintiff's expert was unqualified to opine on vitreoretinal surgery. We submitted prior testimony in which the expert admitted he does not perform epiretinal membrane peel surgeries and defers to vitreoretinal specialists.

The Court granted our motion for summary judgment, fully adopting our arguments, and held that the plaintiff's expert affirmation was deficient, and the expert was not competent to render an opinion on the standard of care in vitreoretinal surgery.

Summary Judgment Obtained in COVID-19 Related Negligence Case



SENIOR TRIAL PARTNER WILLIAM P. BRADY, PARTNER GREGORY J. RADOMISLI, AND SENIOR ASSOCIATE FIACHRA P. MOODY

Bronx County Supreme Court

Allegation: Hospital staff negligence resulted in decubitus ulcers and pressure sores in patient presenting during COVID 19 pandemic.

This case involved a 45-year-old woman with a history of anemia who presented to MCB's client hospital in March 2020 with chest pain. She was admitted to the MICU with ARDS and myocarditis in the setting of COVID-19. Her prolonged and complex hospitalization included failed extubation attempts requiring tracheostomy and PEG, infections, cardiogenic shock, DIC, adrenal hemorrhage, DVT with IVC filter placement, renal failure, cholecystitis, and sacral decubitus ulcers requiring

debridement. She was discharged to an acute rehab facility in July 2020.

The Plaintiff alleged that hospital staff negligently allowed her to develop pressure ulcers by failing to properly turn, position, and intervene to prevent them.

MCB moved for summary judgment, supported by a geriatrician, arguing that the care provided occurred during the hospital's COVID-19 emergency response and was not grossly negligent, thus triggering immunity under Article 30-D of the Public Health Law and the PREP Act.

In opposition, the plaintiff argued that the repeal of the Emergency or Disaster Treatment Protection Act (EDTPA) as of

April 6, 2021, applied retroactively and precluded immunity. In reply, MCB cited appellate decisions, including *Hasan v. Terrace Acquisitions II LLC* (2024 NY Slip Op 00739 [1st Dept. 2024]), holding that the repeal was not retroactive.

The Court agreed, finding MCB's client hospital established a prima facie entitlement to immunity under the EDTPA. It further found the plaintiff's gross negligence claim was inadequately pled to defeat the motion and granted summary judgment.

Summary Judgment Secured in Psychiatric ER Discharge and Suicide Case



SENIOR TRIAL PARTNER PETER T. CREAN, PARTNER EMMA B. GLAZER AND SENIOR ASSOCIATE GABRIELLE F. MURRAY

New York County Supreme Court

Allegation: Improper discharge from psychiatric emergency department resulted in patient death.

This matter involved plaintiff's presentation to a psychiatric ER after a questionable suicide threat. The patient was intoxicated and held overnight until she could be more fully examined in the morning. She denied true suicidal intent or ideation and was discharged home. Twelve days later, she committed suicide. MCB moved for summary judgment on the basis that the standard of care was

met, the patient did not meet the criteria for inpatient psychiatric admission, and that there was an intervening proximate cause of her death. We also relied upon supportive case law from New York that holds that liability will not attach to a psychiatrist who fails to predict a patient will harm himself if the psychiatrist uses his or her professional judgment after a careful examination of the patient when deciding to discharge him. The plaintiff opposed our motion with an affidavit from a psychologist, not psychiatrist, who opined that discharge was not reasonable. In reply, we emphasized that the

plaintiff had failed to raise a triable issue of fact by proffering the affirmation of a psychologist, who is not a medical doctor, and as such, there was no medical evidence of a departure or causation. MCB also argued that even if plaintiff's expert's affirmation was considered, plaintiff had failed to raise a triable issue of fact because his opinions regarding liability were conclusory, disregarded the evidence, and there were no opinions regarding proximate causation. The Court agreed with our arguments and dismissed the case in its entirety.

Summary Judgment Granted in Stroke Evaluation Case



PARTNER ANINA H. MONTE AND ASSOCIATE EDMUND T. RAKOWSKI

Queens County Supreme Court

Allegation: Departure from the standard of care in failing to properly evaluate patient for cause of stroke.

This case claimed that MCB's clients, a neurologist, and his practice group, improperly recommended follow up of a patient, who had been transferred to the codefendant hospital after experiencing a stroke at a non-party hospital. In February 2017, the patient presented to a non-party hospital with a CVA, received tPA, and imaging revealed a possible 70% internal carotid artery stenosis and embolic stroke. At her request, she was transferred for further evaluation to a

codefendant hospital. MCB's client was one of the consulting neurologists, along with a codefendant vascular surgeon, who evaluated her upon her transfer and made recommendations for further work up and treatment. Plaintiff alleged MCB's client should have ordered a repeat CTA based on the prior imaging. However, based upon reassuring Carotid Doppler results, and consistent reassuring MRI/MRA results, vascular surgery determined surgery was not indicated. MCB's client the consulting neurologist recommended further medical management and outpatient follow up. MCB moved for summary judgment, arguing the stan-

dard of care supported further evaluation with MRI/MRA and did not require a repeat CTA, and that surgical decisions rested with the vascular surgeon, who concurred with the plan and his role in the treatment.

In opposition, plaintiff submitted an expert affirmation from a neurology expert not licensed in New York, who claimed a repeat CTA was required and would have shown high-grade stenosis. The Court granted summary judgment for MCB's client, finding plaintiff failed to raise a triable issue of fact, and deeming the expert's opinion speculative and conclusory.

Summary Judgment Secured in Labor and Delivery Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO AND SENIOR ASSOCIATE DEBORAH J. CANN

Westchester County Supreme Court

Allegations: Multiple claims of negligence during labor and delivery of infant led to maternal injuries.

In this case, summary judgment was secured on behalf of MCB's client hospital, OB/GYN private practice, vicarious liability on behalf of neonatologist, OB/GYN physician, and nurses, in a matter

involving alleged negligence during the labor and delivery of the infant plaintiff, as well as individual claims on behalf of the mother. This matter involved an alleged failure to timely respond to fetal

compromise based upon the fetal heart tracings; failure to properly render neonatology care; and individual claims on

behalf of the mother for 4th degree laceration. All claims against our insureds were dismissed on the basis that none of

their actions were a contributing factor to the alleged negligence.

Summary Judgment Secured in Mesenteric Ischemia Case



SENIOR TRIAL PARTNER DANIEL L. FREIDLIN, PARTNER ANINA H. MONTE, PARTNER KERONA K. SAMUELS, AND ASSOCIATE JUSTIN J. PROVVIDO

Nassau County Supreme Court

Allegation: Failure to timely diagnose and treat mesenteric ischemia resulted in additional surgery and wrongful death.

This case involved a 77-year-old single woman who moved from Puerto Rico to New York to seek a medical opinion regarding the cause of her severe postprandial abdominal pain. Plaintiff alleged that our client gastroenterologist failed to timely diagnose and treat mesenteric ischemia. It was alleged that the delay in diagnosis allowed the patient to progress from chronic mesenteric ischemia to acute mesenteric ischemia necessitating bowel resection with resultant short bowel syndrome and death.

MCB moved for summary judgment with the support of a gastroenterology expert who opined that our client appropriately suspected chronic mesenteric ischemia but could not safely order imaging with contrast to confirm the diagnosis. We demonstrated that our client suspected the possibility of chronic mesenteric ischemia at the decedent's initial office visit but his ability to confirm the diagnosis with contrast imaging was limited by decedent's chronic kidney insufficiency. We argued that our client appropriately admitted decedent to the hospital, ordered non-contrast testing to rule out other possible causes of the decedent's complaints and obtained consultation from nephrology to optimize the patient for contrast imaging. Unfortunately,

while waiting for decedent's creatinine clearance to normalize, the patient's condition progressed to acute mesenteric ischemia. A surgical consultation was obtained to try to open any blockages in the mesenteric vessels, but treatable vessels could not be identified. It was argued that not only did our client conform to the standard of care, but that any alleged delay did not proximately cause the injuries because vascular surgery could not identify any vessels to treat. The plaintiff raised several arguments in opposition to our motion, but it was demonstrated that the arguments were not supported by the record. Our motion for summary judgment was granted and the case was dismissed in its entirety.

Summary Judgment Obtained on Behalf of Spine Surgeon



TRIAL PARTNER JOHN M. BUGLIOSI AND PARTNER ADAM T. BROWN

Westchester County Supreme Court

Allegation: Negligence in performing cervical spine surgery, caused vocal cord and voice problems.

In this matter, the plaintiff alleged that MCB's client, an orthopedic spine surgeon, negligently performed a C4-C5, C5-C6, C6-C7 anterior cervical discectomy and fusion, causing injury to the left vagus and/or recurrent laryngeal nerve, resulting in vocal cord paresis and voice dysfunction.

In support of summary judgment, MCB submitted the affirmation of an expert in orthopedic spine surgery, who opined that: (1) the procedure was appropriately indicated; (2) informed consent was

properly obtained, including documentation that "voice problems" were a known risk; (3) a reasonable person in the plaintiff's condition—experiencing severe pain, multiple disc impingements, and inability to hold his head up—would not have withheld consent given the low risk of voice-related complications; and (4) a subsequent treater's flexible scope exam showed normal vocal cord motion, ruling out injury to the nerves or vocal cords.

In opposition, plaintiff submitted an affirmation from an otolaryngologist who had never performed cervical spine surgery, merely claimed to have worked with spine surgeons, but only treated vocal cord injury patients. The expert claimed

the nerves were unprotected during surgery and were directly injured "from instrumentation or otherwise."

In reply, MCB argued the plaintiff's expert was not qualified to opine on the standard of care for cervical spine surgery and that the opinion of nerve injury was contradicted by the treating physician's findings of no such injury.

The Court agreed and granted summary judgment, holding that the plaintiff's expert's opinion was speculative, lacked medical proof, and relied on hindsight reasoning. Citing well settled principles, the Court emphasized that the occurrence of an injury alone does not establish negligence.

Summary Judgment Granted in Unwitnessed Falls Case



SENIOR TRIAL PARTNER JOHN J. BARBERA

Queens County Supreme Court

Allegation: Negligence led to two unwitnessed, undocumented falls by patient at Dialysis Center.

This case involved two unwitnessed and undocumented falls allegedly suffered by the decedent at the defendant facilities, which included the MCB represented Dialysis Center. With respect to each of the falls, there was no documentation of

either fall within the records of the defendants.

MCB moved for summary judgment with the support of a nursing expert who opined that all appropriate measures were taken by the Dialysis Center when the decedent was a patient at the facility. In addition, it was argued that when the decedent arrived to and left the Dialysis Center, the decedent was documented

to be normal, which was also consistent with the documentation of the codefendant nursing home when the decedent returned to that facility from the MCB represented Dialysis Center. Given the circumstantial evidence surrounding each of the falls, MCB's motion for summary judgment was granted following oral argument.

Summary Judgment Secured in Post-Esophagectomy SICU Complications Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO, SENIOR ASSOCIATE STEPHEN C. LANZONE, AND ASSOCIATE CLIFFORD S. BRANTLEY

New York County Supreme Court

Allegations: Negligent surgery and intraoperative positioning caused cervical hyperextension and other complications.

This case concerned the performance of an Ivor Lewis Esophagectomy at MCB's client hospital on December 1, 2016, by MCB's client doctors, and the plaintiff's subsequent SICU admission due to recurrent respiratory distress. Plaintiffs alleged that the surgery and intraoperative positioning caused cervical hyperextension,

left radial nerve palsy, and right foot drop from peroneal nerve compression.

Following extensive discovery, our office moved for summary judgment, supported by expert affirmations in Cardiothoracic Surgery, Anesthesia, and Critical Care Medicine, all of whom attested to the "textbook" performance of the procedure and appropriate SICU care of the plaintiff's respiratory distress, a known complication.

In opposition, plaintiffs' counsel raised entirely new claims, alleging for the first time that cervical hyperextensions

stemmed from SICU trial extubations that worsened preexisting cervical spine pathology, and that peroneal nerve injury resulted from the plaintiff's restrained positioning in the SICU. These claims were supported only by an affirmation from the plaintiff's treating physical medicine and rehabilitation physician.

The Court granted summary judgment, agreeing that plaintiff's expert opinions were conclusory and speculative, and that the expert lacked the foundation to opine on standards of care applicable to pulmonologists and anesthesiologists in a surgical ICU.

Summary Judgment Secured in Postoperative Care Case



SENIOR TRIAL PARTNER ROSALEEN T. MCCRORY AND SENIOR ASSOCIATE JOSEPH P. ENNIS

Queens County Supreme Court

Allegation: Failure to diagnose resulted in complications and additional surgical procedures.

This matter involved a then 63-year-old plaintiff who alleged failure to timely recognize small bowel perforation following surgical re-establishment of gastrointestinal continuity with esophagogastronomy, resulting in serositis, abdominal

compartment syndrome, septic shock and need for numerous significant surgical procedures.

In granting our motion for summary judgment, the Court agreed with our argument and determined that our client did not depart from good and accepted standards of care and did not proximately cause or contribute to the plaintiff's injuries. Namely, it was found that the hospital staff provided appropriate post-

operative care by transferring the plaintiff to the ICU on two occasions after she became hypotensive and tachycardic and administered appropriate treatment including intravenous lines, vasopressors, an x-ray, CT scan, antibiotics, and additional procedures. Moreover, the Court ruled that we further demonstrated that the perforation was timely diagnosed and appropriately treated through a series of additional procedures.

Summary Judgment Secured in Dengue Fever Case



SENIOR TRIAL PARTNER THOMAS A. MOBILIA AND ASSOCIATE GABRIELLE M. VERDONE

Kings County Supreme Court

Allegation: The failure to timely diagnose and treat Dengue Fever led to wrongful death.

This matter involved a then 57-year-old plaintiff's decedent who presented to the emergency department on the morning of December 23, 2015 because of a 6-day history of diarrhea, fevers, nausea, vomiting, and right upper quadrant pain that began while visiting the Dominican Republic. Labs revealed leukocytosis and elevated liver function tests. The patient was started on comfort care for possible viral illness. Dengue fever was suspected and antibody testing was performed. The Dengue antibody testing was performed at an outside lab facility, and the positive results were not available until December 29, 2015. During the night of Decem-

ber 23, 2015, the patient had tonic-clonic seizures, which were controlled with Keppra and Ativan. The patient was additionally started on broad spectrum antibiotics. On December 24, 2015, repeat labs demonstrated acute liver failure, and the patient was indicated for a transfer to a tertiary care facility for consideration of a liver transplant. The patient was continued on supportive care and underwent repeat labs until the receiving facility had bed availability on December 26, 2015. The patient ultimately died on January 28, 2016 because of multiorgan failure secondary to acute liver failure from Dengue fever.

MCB moved for summary judgment on behalf of our client hospital. We argued that the hospital staff timely and properly suspected Dengue fever upon the

patient's admission and appropriately ordered Dengue fever antibody testing. We demonstrated that our client hospital did not have the ability to perform an in-house test for Dengue fever, and the antibody testing by an outside facility was the only method to confirm the diagnosis. MCB further argued that, while the Dengue antibody testing and planned transfer for acute liver failure was pending, the patient was receiving appropriate supportive care to manage her symptoms. Regarding causation, MCB argued that Dengue fever is not treatable and the patient had a rare, very serious case of Dengue fever that caused her acute liver failure and subsequent death. Accordingly, an earlier diagnosis of Dengue fever would not have altered the patient's outcome since her condition was terminal.

Summary Judgment Secured in Vascular Surgery Case



SENIOR TRIAL PARTNER DANIEL L. FREIDLIN, PARTNER ANINA H. MONTE, SENIOR ASSOCIATE CASEY M. HUGHES, AND ASSOCIATE ASHLEY M. MULLINGS-MARAGH

Nassau County Supreme Court

Allegations: Improper technique used during vascular procedure caused a retroperitoneal bleed; failure to adequately respond to episode of hypotension; and a lack of informed consent.

In this matter, the plaintiff contended that MCB's client, a vascular surgeon, improperly used the same vessel accessed by the interventional cardiologist during an angiogram and failed to respond adequately to post-procedure hypotension. A lack of informed consent was also alleged. MCB represented the interventional cardiologist, vascular surgeon, surgical fellow, and hospital.

The patient, an established patient of the vascular surgeon, returned with claudication symptoms. The surgeon recommend-

ed a lower extremity angiogram, pending cardiac clearance. One week prior, MCB's interventional cardiologist performed a cardiac catheterization, which was uneventful and showed stable coronary arteries. The vascular procedure also proceeded without complication.

In the PACU, the patient experienced one transient hypotensive episode but was stable and discharged. He later experienced a syncopal episode at home. Imaging revealed a retroperitoneal bleed near the closure site from the angiogram. The vascular surgeon initially recommended monitoring; after 24 hours, surgical repair of the femoral artery was performed without further complication.

On summary judgment, MCB argued both procedures were appropriately performed; retroperitoneal hematoma is a

known risk; informed consent was obtained; and any alleged delay in managing hypotension did not impact the outcome. The patient returned within hours, was promptly treated, and the condition did not worsen. It was also argued that the surgical fellow acted under supervision and that any claimed injuries were preexisting from a prior stroke.

The Court granted full summary judgment for the interventional cardiologist and surgical fellow, and partial summary judgment for the vascular surgeon, dismissing claims related to performance of the angiogram and informed consent. The sole remaining claim concerns whether there was a delay in diagnosing the bleed based on the PACU hypotension.

Summary Judgment Secured in Electrocautery Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO, PARTNER NICOLE S. BARRESI AND SENIOR ASSOCIATE CASEY M. HUGHES

New York County Supreme Court

Allegation: Improper surgical technique caused a third degree burn and infection, scarring, pain and suffering, and additional treatments.

This matter involved a left ductal excision performed by MCB's client doctor from a well-known New York Hospital on January 13, 2017. The plaintiff initially claimed that MCB's client doctor's electrocautery technique caused a third degree burn to her left nipple and left breast infection, requiring subsequent treatment including multiple debridement's and resulting

in a retracted and scarred left nipple, an open wound cavity, and pain and suffering. At the conclusion of discovery, MCB filed a motion for summary judgment. MCB argued that there was no evidence that plaintiff ever suffered a burn as a result of the treatment at issue but rather that plaintiff had cystic duct ectasia and delayed wound healing due to her comorbidities and smoking history. In opposition, the plaintiff's expert conceded that it was unclear if plaintiff ever suffered a burn. Instead, plaintiff's expert changed the theory of negligence to opine that plaintiff suffered compromised blood

flow to the nipple areolar area by using a thin flap. The Court granted summary judgment as to the institutional defendants from a well-known New York medical & surgical breast and oncology center and hospital and dismissed plaintiff's causes of action for lack of informed consent and negligent hiring. While the Court found that the plaintiff's expert created an issue of fact as to whether a thin flap was appropriate, we filed a strong appeal seeking a full dismissal. While the appeal was pending, we were able to resolve the case for less than 25% of the demand.

Case Dismissed in Fetal Demise Claim Against Midwife and Hospital



SENIOR TRIAL PARTNER YUKO A. NAKAHARA AND APPELLATE PARTNER BARBARA D. GOLDBERG

Appellate Division - 2nd Department

Allegation: Mismanagement of prenatal care caused fetal demise.

This case involved a medical malpractice action against MCB clients: a certified midwife and hospital. A fetal demise was alleged to be caused by the mismanagement of plaintiff's prenatal care. The Tri-

al Court granted defendants' motion for summary judgment on the basis that the care rendered by defendants was neither a proximate cause of, nor a substantial contributing factor in, the fetal demise.

On appeal, the Second Department affirmed the lower Court's dismissal of the action, holding that defendants indeed made a prima facie showing of entitle-

ment to summary judgment, and that plaintiff failed to raise triable issues of fact, as (1) plaintiff's expert "relied upon facts that were not supported by the record and failed to address specific opinions offered by the defendants' expert," and (2) plaintiff attempted to assert new and specific allegations of negligence months after the filing of the Note of Issue.

Summary Judgment Secured in Pulmonary Embolism Case



SENIOR TRIAL PARTNER ARYEH S. KLONSKY AND ASSOCIATE ASHLEY M. MULLINGS-MARAGH

Suffolk County Supreme Court

Allegations: Deviations from the acceptable standards of care led to failure to timely diagnose pulmonary embolism and wrongful death.

This matter claims that the failure to properly manage the then 45-year-old decedent's anticoagulation regimen between January 2014 and January 2015, and a failure to properly interpret radiology imaging resulted in a failure to timely diagnose pulmonary embolism. The decedent, whose medical history

was significant for pulmonary emboli and DVT, presented to the codefendant emergency department with complaints of trouble taking a breath with chest pain. She reportedly was not taking Coumadin (anticoagulation) and her INR was 1.1 (normal range for a patient not on anticoagulation).

Upon evaluation, the decedent underwent a CT Angio of the Chest with contrast, a chest x-ray, and a Doppler Study of the legs. MCB's radiologist-client interpreted the CT Angio as not suspicious

for pulmonary emboli and MCB's other radiologist-client interpreted the ultrasound Doppler of the legs, which was negative for DVT, as well as the portable chest x-ray, which was also negative. The decedent was discharged home with instructions to follow with her primary care providers and to discuss restarting Coumadin with her medical providers. Anticoagulation medication was never restarted. The decedent died about two months later on January 14, 2015 secondary to pulmonary emboli.

MCB moved for summary judgment on behalf of its radiologist clients. The Court ruled that MCB established a prima facie case, demonstrating that MCB's radiolo-

gist-clients did not deviate or depart from the acceptable standards of radiological care, and that there was no causal connection between plaintiff's claims of mal-

practice and decedent's injuries. As such, the court granted the motion dismissing all claims against MCB's clients.

Summary Judgment Secured in High-risk Pregnancy Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO, PARTNER ADAM T. BROWN, AND SENIOR ASSOCIATE KRISTEN E. GRIFFIN

Dutchess County Supreme Court

Allegation: Failure to appreciate BPP abnormality caused fetal compromise and newborn death.

This case involved a female patient, who presented to the hospital with complaints of contractions with back and epigastric pain. A biophysical profile was performed indicating low amniotic fluid and scoring 6 out of 8. MCB's client physician admitted the patient to the hospital for overnight monitoring and a repeat biophysical profile in the morning. The following morning the patient was reassessed with an unremarkable biophysical profile score of 8 out of 8 and normal amniotic fluid levels. The patient was discharged home with instructions to follow in two days.

Two days later, the patient returned with fetal distress. A severely compromised infant was delivered who expired shortly thereafter.

MCB moved for summary judgment on behalf of their client OB/GYN. We were able to demonstrate that the infant's injuries resulted from a placental abruption that occurred after the discharge. MCB

successfully argued that the plaintiff mother had been appropriately observed and monitored with no signs of placental abruption. MCB successfully explained the inconsistency in the BPP over the two days. The plaintiffs opposed the motion with an OB/GYN expert affirmation arguing that further monitoring was warranted due to the inconsistent BPPs. MCB was able to dismantle plaintiff's expert affirmation, demonstrating it was entirely speculative and conclusory. The Court granted summary judgment, dismissing the case in its entirety.

Summary Judgment Obtained in Child Appendicitis Case



SENIOR TRIAL PARTNER THOMAS A. MOBILIA, PARTNER RICHARD WOLF, AND SENIOR ASSOCIATE STEPHEN C. LANZA

Queens County Supreme Court

Allegation: Failure to diagnose led to perforated appendicitis.

This case involved allegations of a failure to diagnose appendicitis in a then 12-year-old female, who presented to MCB's client Emergency Department with upper abdominal pain, nausea, and vomiting. After two physical examinations by the attending ED physician and the administration of Pepcid and Maalox, her symptoms resolved. She was discharged with a diagnosis of gastritis and advised to return if symptoms recurred.

The next evening, the infant-plaintiff visited a co-defendant hospital ED, where appendicitis was ruled out via physical examination and ultrasound. Two days later, she was diagnosed with acute appendicitis at a non-party hospital.

MCB moved for summary judgment on behalf of the attending ED physician, two ED nurses, and the Hospital, supported by a pediatric emergency medicine expert affirmation. The expert opined that the infant-plaintiff's symptoms were typical of a benign GI issue, not appendicitis, and the resolution of symptoms post-medication

administration supported her discharge.

Plaintiff opposed with an expert affirmation, citing deposition testimony from the mother and infant-plaintiff, which claimed she presented with different symptoms than those documented in the ED record. Plaintiff's expert opined that appendicitis lacks a classic presentation in many cases, and that the defendants in this matter failed to rule-out the diagnosis.

The Court granted MCB's motion in full, finding that the care rendered reflected reasonable medical judgment, and that plaintiff failed to raise a triable issue of fact.

MCB Secures Dismissal of Claims Against Orthopedic Surgeon



SENIOR TRIAL PARTNER JEFF LAWTON AND SENIOR ASSOCIATE GRAHAM T. MUSYNSKI

Nassau County Supreme Court

Allegation: Departure from the standard of care in performing a hip replacement and subsequent care.

This case involved the dismissal of all claims against MCB's client, an orthopedic surgeon, arising from allegations that, in March 2020, he negligently repaired an

intertrochanteric hip fracture, resulting in postoperative complications.

MCB obtained the opinion of an orthopedic surgery expert who stated that MCB's

client met the standard of care and that no act or omission caused the alleged injuries. MCB's expert noted the fracture was significantly comminuted, known to heal slowly, and that such fractures can result in hardware failure, delayed union, or nonunion even with optimal treatment. Nonunion is not "per se" evidence

of malpractice and that the postoperative care and treatment were appropriate.

In opposition, plaintiff's expert did not challenge the surgery itself but argued the surgeon should not have used ultrasonic bone stimulation and should have provided "close postoperative follow-up" due to the plaintiff's advanced age.

In reply, MCB argued plaintiff's expert failed to address key aspects of care and provided only conclusory claims without specifying what would have changed the outcome. The Court agreed with MCB and granted dismissal of all claims, finding plaintiffs failed to raise a triable issue as to the surgery or postoperative care.

Summary Judgment Obtained in Pressure Ulcer Prophylaxis Case



PARTNER EMMA B. GLAZER AND ASSOCIATE LAUREN BISOGNO

Westchester County Supreme Court
Allegation: Failure to diagnose stage III and stage IV ulcers.

This case involves the alleged development of a stage IV sacral ulcer and a stage III hand ulcer on a patient with multiple comorbidities, including kidney disease, diabetes, and impaired gait.

MCB moved for summary judgment with the support of a geriatrician who opined that all appropriate pressure ulcer prophylaxis measures were implemented and the patient only developed a stage II sacral ulcer, and no hand ulcer, as a result of her pre-existing conditions. In opposition, plaintiff's expert opined that the development of pressure ulcers should never occur. Plaintiff's expert did not ad-

dress any of the opinions offered by the defendant's expert or offer any opinions as to why the prophylaxis measures provided were insufficient. The Court found that plaintiff's expert's affidavit was conclusory, ignored the records, and failed to raise a triable issue of fact. As such, summary judgment was granted and the case was dismissed. ■

MEDICAL MALPRACTICE:

OTHER NOTABLE CASES

Dismissal in Alleged Employee Discrimination Case



SENIOR TRIAL PARTNER KENNETH R. LARYWON AND APPELLATE PARTNER BARBARA D. GOLDBERG

Appellate Division, Second Department
Allegation: Inappropriate comments created a hostile work environment.

In this case, the plaintiff, a housekeeper at our client hospital, alleged that she was subjected to a "hostile work environment" because of a comment made by her supervisor regarding her pregnancy. She brought an action seeking damages for employment discrimination on the basis of gender, pregnancy and disability in violation of the New York

City Human Rights Law (NYCHRL). At trial, the jury found in plaintiff's favor on the cause of action alleging hostile work environment on the basis of pregnancy and awarded damages. We moved to set the verdict aside, arguing that in order to support a claim for hostile work environment under the NYCHRL, the conduct (or comment) at issue must exceed "what a reasonable victim of discrimination would consider petty slights and trivial inconveniences," and that the supervisor's comment simply did not rise

to that level. The trial court agreed and set the verdict aside. The Appellate Division affirmed, finding that the motion to set aside the verdict and for judgment as a matter of law dismissing that cause of action was properly granted, "since a reasonable person would consider the complained-of conduct nothing more than petty slights or trivial inconveniences."

Dismissal in Alleged Hospital Assault Case



SENIOR TRIAL PARTNER CHARLES S. SCHECHTER AND SENIOR ASSOCIATE CASEY M. HUGHES

Queens County Supreme Court

Allegation: Improper discharge from psychiatric emergency department resulted in patient death.

This case involved a then 33-year-old male who, while attempting to leave the hospital's emergency room following his presentation for psychiatric treatment, fractured his jaw. The plaintiff alleged assault and claimed the injury was the

result of an altercation with a security officer. A motion to dismiss was filed on behalf of MCB's client hospital due to the plaintiff's failure to provide discovery in accordance with prior orders, including a Default Court Order, over the course of a year and a half. The plaintiff filed late opposition, attached partial responses to discovery, and excused his noncompliance by stating that it was difficult to get in touch with his client. In reply,

MCB argued that plaintiff's opposition should not be considered, as it was both untimely and deficient in addressing the discovery issues, and further, that plaintiff provided an unreasonable excuse for noncompliance. The Court agreed with our position, finding plaintiff's opposition untimely, deficient, and without reasonable excuse for failing to comply with prior court orders. As such, the Court dismissed this case in its entirety.

Dismissal Secured in Time-Barred Products Liability Case



SENIOR TRIAL PARTNER KAREN B. CORBETT AND ASSOCIATE KELEISHA A. MILTON

Queens County Supreme Court

Allegation: Silicone injection caused severe necrosis and disfigurement decades later.

This matter involved claims of strict products liability, negligence and res ipsa loquitor, brought by a pro se plaintiff, who alleged that the injection of medical grade liquid silicone into his nose in 1982, to address acne scarring, caused necrosis and disfigurement decades later. MCB represented the dermatologist.

The silicone manufacturer was initially a co-defendant in this matter. Shortly after issue was joined, the co-defendant's motion to sever plaintiff's claims against them was granted and plaintiff's case against them was transferred to the Federal Court for the Eastern District of Michigan. The Federal Court subsequently granted the silicone manufacturer's Motion to Dismiss on statute of limitations grounds. Meanwhile, the Queens County Supreme Court case proceeded against MCB's defendant dermatologist. Prior to depositions, MCB filed a motion

to dismiss, asserting that this case should be dismissed based on either the lapse of the statutes of limitations or by application of collateral estoppel based on the Decision rendered by the Federal Court for the Eastern District of Michigan, which granted the co-defendant's Motion based on essentially the same core facts. The Queens County Supreme Court agreed that collateral estoppel applied and ruled that plaintiff's causes of action for strict products liability, negligence and res ipsa loquitor, are time barred and those claims have been dismissed with prejudice.

Victory in Medical Negligence Case: Court Denies Leave to Serve Late Notice of Claim



SENIOR TRIAL PARTNER MICHAEL F. MADDEN, PARTNER RICHARD WOLF, AND SENIOR ASSOCIATE JOHN A. ROHAN

Queens County Supreme Court

Allegation: Negligent care, prenatally, and during labor and delivery, resulting in birth of severely compromised infant.

In this matter, MCB attorneys obtained denial of a petition to serve a late Notice of Claim in a case against MCB's client, a municipal hospital, alleging negligent prenatal and labor and delivery care, resulting in the infant's severe cognitive disabilities.

In opposing the petitioner's Order to Show Cause, it was argued the hospital lacked actual knowledge of the essential facts within a reasonable time after the 90-day Notice of Claim period because the petitioner failed to submit relevant medical records. It was also asserted the petitioner's expert affidavit should be disregarded as it lacked a certificate of conformity, required for an out-of-state expert, and lacked a proper foundation.

It was further argued the petitioner failed to prove lack of substantial prejudice to

the hospital if leave were to be granted, and lacked a reasonable excuse for the nearly two-year delay in moving for leave.

The Court agreed, noting the petition was filed over 18 months after expiration of the 90-day period and 13 months after the petitioner retained counsel. The Court rejected the petitioner's proffered excuses, deemed the expert affidavit inadmissible, and held the petitioner failed to meet her burden. This decision forecloses any lawsuit, insulating the hospital from millions in potential exposure. ■

Partner Promotions

MCB proudly announces the promotion of three talented attorneys to Partner between June 2024 and June 2025.



ADAM T. BROWN



VICTOR M. IVANOFF



RICHARD WOLF

Happy Retirement

MCB wishes Bruce Habian, Esq. a very happy and well-deserved retirement after over 50 years with the Firm!

BRUCE G. HABIAN Senior Trial Partner

Bruce's case work was meticulous, and he was always a fierce advocate for his clients. He was honored with many awards and accolades, and he took hundreds of cases to successful conclusion.



Welcome New Attorneys

MCB continues to strategically bring aboard new legal talent to enhance our capabilities and broaden our collective expertise.



ELIZABETH C. ATHY



ROBERT J. BETZ



SARAH E.T. ERTLE



AHARON Y. FIREMAN



ANDREW J. FISHER



EMILY N. GALVEZ



NICHOLAS G. GIORDANO



KENYA S. HARGROVE



ERIN HEMME



OLADAPO O. OGUNSOLA



DAVID C. PERROTTO



SHANNON L. STEWART



GABRIELLA M. VERDONE



SOPHIE E. WHITE



ANDREW Z. ZARRIELLO



MICHAEL F. MADDEN

MCB Announces New Managing Partner

Effective January 13, 2025, Senior Trial Partner Michael F. Madden was appointed as the new Managing Partner at Martin Clearwater & Bell LLP. In addition to his legal work defending doctors and hospitals, he serves as the Firm's main client liaison, supervises new case intake, and manages attorney education and training. Throughout his 30+ year career, Michael has demonstrated exceptional leadership and mentoring skills, and we are confident that his experience and ethical standards will help drive the Firm's continued success.

13 Areas of Practice

While our Firm enjoys the distinction of being the oldest and largest medical defense firm in New York, our practice areas have grown significantly over the decades, serving individuals and small businesses to large corporations and institutions.

Appellate

The Firm has a team of dedicated specialists who are skilled in the art of appellate advocacy in both state and federal courts. These elite appeals attorneys have worked extensively across all of the practice areas for which the Firm is known.

As appellate advocates, this group has particular expertise in legal research, persuasive writing and cogent oral argument. Their zealous advocacy and innovative, cutting-edge work has helped shape the laws of this State. In 2023, our Appellate team handled 70 active matters and produced 15 favorable results for our clients.

General Liability

While virtually all businesses and many individuals purchase insurance to cover the risk of general liability claims, many lawsuits seek damages that far exceed the maximum amount of insurance coverage. This is why MCB retains a full complement of skilled attorneys who are experts in all facets of general liability law, from bodily injury and slander to property damage and premises liability. Our clients include state agencies; cities and towns; school boards; police and other public safety departments; insured businesses; and individuals.

Health Care Law

MCB is currently handling over 75 active health care and regulatory matters, including Office of Professional Discipline (OPD) and Office of Professional Medical Conduct (OPMC) interviews and investigations. Of our recently closed matters, an impressive 90% have been closed without disciplinary action, with the remaining matters involving a negotiated agreement.

Nursing Home, Home Care & Other Allied Health Services

We have seen year-over-year growth in our Nursing Home Practice Group, with a continued increase in cases related to the defense of nursing homes, home care and allied health professionals. Nursing home law is a very specific practice area requiring comprehensive knowledge of pertinent governmental laws and regulations; medical and nursing issues in nursing home environments; insurance company operations; and risk management protocols.

The seasoned nursing home and aging services defense attorneys at MCB are well-prepared to aggressively defend their clients in this arena. Our 100+ clients in this area include nursing homes, skilled nursing facilities, assisted living facilities, continuing care retirement communities, board and long-term care homes, home care agencies and hospice care facilities.

COVID-19 LEGAL SERVICES

Our team specializing in Covid-19 cases continues to address evolving legal issues stemming from the pandemic's lasting impact.

DENTAL MALPRACTICE

MCB has been a proven leader in the defense of dentists, orthodontists, and all other related professionals in this field for the last century.

ELECTRONIC DISCOVERY

Our attorneys assist clients in the most cost-effective way to manage discovery, from preservation through production.

LABOR & EMPLOYMENT

Our attorneys help clients to navigate constantly changing laws and regulations to assess and mitigate risk and avoid litigation whenever possible.

MEDICAL MALPRACTICE

Brimming with talent and expertise that has been the model of the industry for more than 110 years, MCB has earned its reputation as the premier medical malpractice defense firm across the tri-state area.

PODIATRIC MALPRACTICE

Our attorneys use their premier legal skills and medical knowledge to ensure the best possible resolution of claims against their podiatrist clients.

PRODUCTS LIABILITY

Our attorneys have decades of experience defending against allegations involving design defects, manufacturing defects, and defects in marketing.

PROFESSIONAL DISCIPLINE & LICENSING

MCB has extensive experience representing health care professionals in connection with OPMC and OPD investigations.

PROFESSIONAL LIABILITY

The Firm has defended nationally recognized law firms, Big Four accounting firms, and high-profile individuals against a wide variety of claims.

From Our Diversity Committee Chair



MCB is proud to highlight the remarkable achievements and events spearheaded by our Diversity & Inclusion Committee during 2024 and 2025. We continue to celebrate our firm's diversity, and cultivating a sense of belonging among our staff. —Yuko A. Nakahara



MCB is honored to renew our Mansfield Certification through 2024. Reaffirming our dedication to diversifying leadership – ensuring that 30% of candidate pools include women, LGBTQ+ individuals, people with disabilities, and racial/ethnic minorities.



Last year, MCB hosted a dedicated Diversity & Inclusion Continuing Legal Education seminar. This training reinforced our commitment to champion a truly inclusive culture, and to foster a workplace where all individuals feel valued and can thrive.



For the third consecutive year, MCB hosted a student clothing shopping event, teaming up with schools and community partners to outfit students in need with professional attire—boosting their confidence as they pursue career opportunities.

Community & Camaraderie



COAT DRIVE & DISTRIBUTION



PARTNERS VS. ASSOCIATES ANNUAL SOFTBALL TOURNAMENT - CENTRAL PARK



THANKSGIVING POTLUCK



FOOD DRIVE



OPERATION BACKPACK FOR KIDS IN NEED



3RD ANNUAL SUITED FOR SUCCESS



CHILDREN'S HOLIDAY PARTY

CLE Presentations

Successful Defense of Attempted Suicide Case: The Trial and Appeal

BARBARA D. GOLDBERG, ESQ., MICHAEL B. MANNING, ESQ. | 6/25/25

Mastering Medical Malpractice Mediations

MICHAEL F. MADDEN, ESQ. | 5/14/25

Pleadings and Initial Client Contact

JACQUELINE D. BERGER, ESQ. | 4/11/25

Plaintiff's Depositions from a Defense Perspective

ELIZABETH J. SANDONATO, ESQ. | 4/11/25

Preparing and Handling Court Conferences

KAREN B. CORBETT, ESQ. | 4/10/25

The Basics of Reviewing a Medical Record

GREGORY J. RADOMISLI, ESQ. | 4/10/25

Discovery and Discovery Motions

ANINA H. MONTE, ESQ. | 4/10/25

Discovery and Discovery Motions

KENNETH J. BURFORD, ESQ. | 4/9/25

The Life of a Medical Malpractice Case

GREGORY J. RADOMISLI, ESQ. | 3/12/25

Biennial Ethics CLE:

Important Topics for Litigators 2025

MICHAEL A. SONKIN, ESQ., JENNIFER FINNEGAN, ESQ.,
ARYEH S. KLONSKY, ESQ. | 2/27/25

Codefendant Depositions

KERONA K. SAMUELS, ESQ. | 2/13/25

The Basics of Reviewing a Medical Record

NICOLE S. BARRESI, ESQ. | 2/13/25

Anatomy of a Trial

CHRISTOPHER A. TERZIAN, ESQ. | 2/12/25

Preparing and Handling Court Conferences

SAMANTHA E. SHAW, ESQ. | 2/12/25

Plaintiff's Depositions from a Defense Perspective

MICHAEL B. MANNING, ESQ. | 2/12/25

Discovery and Discovery Motions

ANINA H. MONTE, ESQ. | 2/11/25

Billing and Time Management

EMMA B. GLAZER, ESQ. | 2/5/25

Trial Preparation Guidelines

MICHAEL A. SONKIN, ESQ. | 1/22/25

Notice of Claim Law and Opposing Applications to Serve Late Notices of Claim

RICHARD WOLF, ESQ. | 12/18/24

Diversity, Equity & Inclusion (DEI)

Considerations in Healthcare

YUKO A. NAKAHARA, ESQ., KAREN B. CORBETT, ESQ. | 11/20/24

Role of the Second Attorney and Delegations

KAREN B. CORBETT, ESQ., KERONA K. SAMUELS, ESQ. | 10/9/24

Codefendant Depositions

ANINA H. MONTE, ESQ. | 10/9/24

Discovery and Discovery Motions

ELIZABETH J. SANDONATO, ESQ. | 10/2/24

Mastering Medical Malpractice Mediations

MICHAEL F. MADDEN, ESQ., EMMA B. GLAZER, ESQ. | 9/11/24

Emerging Trends: A Comprehensive Look at QA

Decisions, Damages and EMR Discovery

MICHAEL A. SONKIN, ESQ., BARBARA D. GOLDBERG, ESQ.,
RICHARD WOLF, ESQ. | 6/27/24

Elements of the Defense of a Medical Malpractice Case

EMMA B. GLAZER, ESQ., AMY E. KORN, ESQ. | 6/20/24

The Role of a Junior Associate/Third Attorney

MICHAEL B. MANNING, ESQ. | 6/13/24

Generative AI Use in Law Firms: Ethical and Practical Challenges

MATTHEW K. CORBIN, ESQ., JENNIFER FINNEGAN, ESQ. | 6/12/24

Preparing and Handling Court Conferences

SAMANTHA E. SHAW, ESQ., KERONA K. SAMUELS, ESQ. | 6/12/24

Speaking Engagements & Sponsorships

Depositions in a Medical Malpractice Case

PRESENTED AT FORDHAM UNIVERSITY, SCHOOL OF LAW
JACQUELINE D. BERGER | 2/10/25

Radiology Malpractice Lawsuits: Bringing or Defending Claims for Medical Error

STRAFFORD LIVE WEBINAR | DANIEL L. FREIDLIN, ESQ. | 4/2/25

Mitigating Legal Exposure in OB/GYN Cases

FLUSHING HOSPITAL MEDICAL CENTER - OB/GYN DEPARTMENT
JACQUELINE D. BERGER | 4/18/25

AHRMNY Silver Sponsorships

FULL DAY CONFERENCE & RECEPTION | JUNE 2024 & 2025

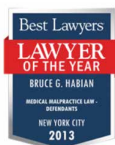
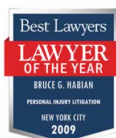
UPSTATE NEW YORK CONFERENCE & RECEPTION | OCT 2024 & 2025



American Board
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Super Lawyers®
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2 SENIOR TRIAL PARTNERS ELECTED TO THE AMERICAN COLLEGE OF TRIAL LAWYERS:

Peter T. Crean and Bruce G. Habian

3 PARTNERS SELECTED TO AMERICAN BOARD OF TRIAL ADVOCATES (ABOTA): Senior Trial Partners Jeff Lawton and Rosaleen T. McCrory, and Partner Christopher A. Terzian

2023-2024 MIDSIZE MANSFIELD CERTIFICATION PLUS STATUS: MCB has achieved Midsize Mansfield Certification Plus Status, underscoring the strides we have taken in our journey toward a more diverse and inclusive firm.

2025 MARTINDALE HUBBELL® AV PREEMINENT® RATED ATTORNEYS: 26 Partners have been selected by their peers and rated AV Preeminent, Martindale Hubbell's® highest rating, based on legal abilities and ethical standards.

BEST LAWYERS® RECOGNITION: 13 Partners have been recognized in the New York City edition of *The Best Lawyers in America*® 2025: Laurie Ann Annunziato, John J. Barbera, William P. Brady, Peter T. Crean, Barbara D. Goldberg, Bruce G. Habian, Kenneth R. Larywon, Jeff Lawton, Michael F. Madden, Rosaleen T. McCrory, Thomas A. Mobilia, Charles S. Schechter, and Michael A. Sonkin.

BEST LAWYERS® ONES TO WATCH RECOGNITION: 11 MCB attorneys received 2025 Best Lawyers®: Ones to Watch recognition for Medical Malpractice Law – Defendants.

2024 SUPER LAWYERS AND RISING STARS SELECTIONS: 11 MCB Partners were selected to the 2024 New York Super Lawyers list. 6 Partners and 2 Associates were selected to the 2024 New York Rising Stars list.

BEST LAWYERS® BEST LAW FIRMS: MCB was named by Best Law Firms® as a Tier 1 New York firm in four practice areas in 2024: Health Care Law, and Legal Malpractice Law, Medical Malpractice Law, and Personal Injury Litigation (Defendants). The Firm was also named by Best Law Firms® as a Tier 2 national firm for Health Care Law.

2 SENIOR TRIAL PARTNERS AWARDED BEST LAWYERS® "LAWYER OF THE YEAR": Peter T. Crean, Best Lawyers® 2020 Legal Malpractice – Defendants "Lawyer of the Year" in New York; and Bruce G. Habian, Best Lawyers® 2009 and 2013 Legal Malpractice – Defendants "Lawyer of the Year" in New York.

FORTUNE'S TOP RANKED LAW FIRMS: MCB has been recognized in the "Top Ranked Law Firms" feature in *Fortune* magazine.

NEW YORK MAGAZINE'S "NEW YORK LEADERS IN THE LAW": MCB was featured in "New York Leaders in the Law," published by *New York Magazine*.

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