

Defense Practice UPDATE

MARTIN CLEARWATER & BELL LLP

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The Radiologist's Use of Artificial Intelligence and Legal Implications

BY: THOMAS A. MOBILIA, ESQ., DANIEL L. FREIDLIN, ESQ. AND ARYEH S. KLONSKY, ESQ.

Artificial intelligence (AI) is transforming industries and aspects of daily life. AI is designed to mimic human intelligence by allowing a machine to solve problems using a set of predetermined rules. AI is slowly (or perhaps not so slowly depending on perspective) being integrated into various sectors, including healthcare. Perceived benefits of the use of AI in healthcare include increased efficiency and enhanced diagnosis.

In the field of radiology, AI is being integrated into radiology practices to assist radiologists in detecting subtle abnormalities. AI algorithms are being promoted as being able to analyze imaging studies including x-rays, mammograms, ultrasounds, CT scans and MRIs. In addition to increased diagnostic accuracy, AI's objective is to enhance workflow efficiency and increase the speed of image interpretation. Further, the AI algorithm will learn over time to recognize patterns associated with specific diseases, leading to earlier and more accurate diagnosis.

One area in radiological imaging where the use of AI is expected to expand over time is in the interpretation of breast imaging studies such as mammograms. There is a reported false neg-

ONE AREA IN RADIOLOGICAL IMAGING WHERE THE USE OF AI IS EXPECTED TO EXPAND OVER TIME IS IN THE INTERPRETATION OF BREAST IMAGING STUDIES SUCH AS MAMMOGRAMS. THERE IS A REPORTED FALSE NEGATIVE RATE IN MAMMOGRAPHY OF APPROXIMATELY 15%.¹

ative rate in mammography of approximately 15%.¹ Dense breast tissue is known to obscure subtle densities and microcalcifications associated with breast cancers. Computer-aided detection (CAD) has been used as an adjunct to mammography for years, but it can be unreliable, nonspecific and overly sensitive. CAD can miss suspicious findings yet highlight findings that are ultimately found to be benign. AI programs are currently being promoted to bypass the unreliable nature of CAD. These programs include Clarity Breast, Mammoscreen, Hologic Genius AI Detection, Profound Detection and others. The AI software will compare the current mammogram to other imaging studies in

1. See, e.g., Chan et al., False-Negative Rate of Combined Mammography and Ultrasound for Women with Palpable Breast Masses, *Breast Cancer Res Treat.* (October 2015), available at <https://pubmed.ncbi.nlm.nih.gov/26341750/>.



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its database to highlight findings or lesions on imaging for evaluation by the radiologist.

While the use of AI software programs in breast imaging offers promise in the efficiency and accuracy of breast imaging interpretation, there are, of course, legal challenges should the radiologist miss a cancer. This article does not intend to address the potential privacy concerns involved with a radiology facility sharing its imaging studies with the AI software developer but certainly that is a potential concern as well.

In the typical medical malpractice action involving a failure to diagnose breast cancer on mammography, at the very least the radiologist and radiology facility will be sued. In these cases, the plaintiff must prove that the radiologist departed from the standard of care in failing to identify and report a suspicious finding on mammogram and make appropriate recommendations for further management. The plaintiff will rely on expert testimony to prove that a similarly situated radiologist in the community would have identified and reported the finding with the appropriate recommendation for further management. Defenses to these allegations may include that the finding represents normal-appearing fibroglandular breast tissue, that the finding has been present and stable on breast imaging studies over time, or that the finding is so subtle that no reasonable radiologist would be expected to identify it – all of which would ultimately be evaluated by a lay jury at trial.

With continued integration of AI models, a question may arise as to whether it is the radiologist or the AI software developer that should be held liable to the patient. This issue has not yet been

THE MORE INTERESTING QUESTION TO BE ANSWERED IS WHETHER THE AI SOFTWARE DEVELOPER WILL BEAR ANY RESPONSIBILITY FOR A MISSED CANCER. TWO ISSUES COME TO MIND: (1) WHETHER THE PATIENT CAN SUE THE AI DEVELOPER WHEN THIS TECHNOLOGY IS USED; AND (2) CAN THE RADIOLOGIST OR RADIOLOGY FACILITY INITIATE A THIRD-PARTY LAWSUIT AGAINST THE DEVELOPER IF THE SOFTWARE FAILS TO IDENTIFY A CANCER.

evaluated by the courts; if we assume, however, that the radiologist is still rendering the interpretation of the imaging study using AI as an adjunct tool then the plaintiff's lawyer could argue that there exists a physician-patient relationship and that the radiologist owes a duty to the patient. As such, we can expect the law will hold that the radiologist owns the interpretation (and the liability). Whether the radiologist and the defense attorney can use the AI program's findings to convince a jury that the radiologist did not depart from the standard of care in a situation where the program did not identify a suspicious finding will likely depend on how society perceives and learns to accept AI's effectiveness and accuracy.

The more interesting question to be answered is whether the AI software developer will bear any responsibility for a missed cancer. Two issues come to mind: (1) whether the patient can sue the AI developer when this technology is used; and (2) can the radiologist or radiology facility initiate a third-par-

ty lawsuit against the developer if the software fails to identify a cancer. We can expect that licensing agreements between the radiology facility and the software developer will include clauses to protect the software company from impleader, but whether the patient can sue remains to be seen. The answer to this question will likely hinge on whether the courts determine that the AI software developer owes a duty to the patient, and in the situation where the radiologist renders his or her own interpretation, the answer to the question is likely to be no. Historically, we have not seen cases where a CAD developer has been sued where the CAD misses a finding. Although AI is not expected to completely replace the radiologist in the near future, this area of medicine is still evolving, and the analysis may change. As a result, the courts may be compelled to provide the allegedly injured patient with some avenue of recovery.

With the integration of AI into breast imaging, there will likely be an increase in breast biopsies or callbacks for further diagnostic studies. We can expect that the radiologist will be overly cautious with findings identified by the AI program, even if the radiologist suspects that the same has benign features, for fear of litigation. If a radiologist elects to override an AI finding, and we assume that the AI interpretation is stored and discoverable, radiologists should likely address their analysis of the AI finding in their radiology report so that they can defend themselves years later when litigation arises.

As with any new technology, the integration of AI into medicine is evolving, and the extent of its impact is yet to be known. Novel issues will certainly arise

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The Radiologist's Use of Artificial Intelligence and Legal Implications

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over time with respect to whether the AI software or images are discoverable in the course of litigation and whether use of AI will alter the standard of care for the radiologist utilizing AI as an adjunct tool in the interpretation of imaging studies. We anticipate that for

now, radiologists will continue rendering final interpretations with AI as has been the case for years with the use of CAD and therefore will bear the exposure if litigation arises. However, some believe that AI software will have the capability to replace the human radiol-

ogist entirely. If this occurs, the courts will have to reinvent how the duty to the patient and physician-patient relationship is evaluated to provide the patient with a cause of action where a cancer or significant finding is missed on imaging. ■



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Daniel L. Freidlin is a Senior Trial Partner at Martin Clearwater & Bell LLP. Mr. Freidlin focuses his practice on the defense of medical malpractice and professional liability cases and represents major teaching hospitals in New York as well as individual physicians.



Aryeh S. Klonsky is a Senior Trial Partner at Martin Clearwater & Bell LLP with over 17 years of litigation defense experience, and a focus on the defense of medical malpractice and professional liability matters in civil, state and federal courts.

Increasing Nursing Home Negligence Case Values

BY: KAREN CORBETT, ESQ. AND VICTOR IVANOFF, ESQ.

We continue to see an upward trend in verdicts and settlements in nursing home negligence cases in New York. Most recently, in June of 2025, in *Serrapica v. South Shore Rehabilitation and Nursing Center*, a Nassau County jury awarded a total of \$5 million - \$4 million in compensatory damages and \$1 million in punitive damages in a nursing home negligence and wrongful death case.

In *Serrapica*, plaintiff asserted claims under Public Health Law Sections 2801-d and 2803-c. The case was brought on behalf of the deceased, Henry Serrapica, a then 67-year-old retired postal worker and veteran. Mr. Serrapica's history was significant for stroke, renal and pancreatic transplant, hypertension, and diabetes. He was transferred

to South Shore Rehabilitation and Nursing Center on January 6, 2018, following a hospital admission for pneumonia at Mt. Sinai South Nassau Community Hospital. It was alleged that Mr. Serrapica entered the nursing home without any skin breakdown, only to be subjected to a nearly two-year admission of abuse and neglect culminating in the development of numerous and severe untreated pressure ulcers and infection, including Stage IV pressure ulcers to the bilateral heels with bone exposure, and unstageable pressure injury to the sacrum; all of which is claimed to have gone overlooked by the nursing home. It was further alleged that the decedent was caused to sustain six unwitnessed falls during the course of his admission, along with severe malnutrition as evidenced by a near

40-pound weight loss to 106 pounds at the time of discharge from the facility in November 2019. As a result of the foregoing, it was alleged that Mr. Serrapica was caused to suffer significant pain and suffering, loss of dignity, emotional distress, and his ultimate demise on December 26, 2019 due to sepsis secondary to the pressure ulcers. At Trial, the jury awarded \$2 million for physical harm resulting from one or more violations of the Public Health Law, \$1 million for conscious pain and suffering, and \$1 million to Mr. Serrapica's distributees for damages related to his wrongful death. Plaintiff further established extensive and long-term neglect and abuse, which the jury used to support their award of \$1 million in punitive damages.

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Increasing Nursing Home Negligence Case Values

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Inflation, both economic and social, is undoubtedly a major contributing factor to this upward shift. Economic inflation has driven an increase in the cost of living, decreased the purchasing power of money, and the desensitization to larger verdicts. Social inflation is also likely being driven by the negative public image of nursing homes in general. This is fueled by negative press, attorney advertisements, and the overall negative public sentiment. Notably, in 2022, nursing homes were front and center in the public eye when Attorney General Letitia James sued the owners and operators of the Villages of Orleans Health and Rehabilitation, accusing them of siphoning over \$18 million from patients, including Medicare and Medicaid funds, while conditions for residents were neglectful, abusive, and ultimately fatal. This is just one of several lawsuits commenced by the Attorney General's Office against nursing homes in New York

State. In 2024, AG James announced a major settlement with the owners and operators of four nursing homes managed by Centers for Care, LLC, requiring them to pay \$45 million in damages, and to address what was described as years of mistreatment and neglect.

This negative publicity is likely adding to jury bias. And the economic climate overall is adding to desensitization to large awards. Combined, this has led to larger verdicts and, by unfortunate extension, larger settlements. Since Nassau County is typically a conservative venue which is traditionally favorable to defendants, the *Serrapica* verdict signals an upward trend in the value of these cases across all venues.

These larger values create added risk to our clients and their insurance carriers. Forecasting is becoming increasingly more difficult due to the limited amount of cases proceeding to trial and minimal reported verdicts and settle-

ments. Now more than ever, properly assessing the value of nursing home negligence cases early on is to strategize to achieving the best possible result for our clients. ■



Karen B. Corbett is a Senior Trial Partner at Martin Clearwater & Bell LLP, specializing in all areas of medical malpractice litigation and nursing home defense. Her clients include major hospitals, medical professionals and other health care institutions.



Victor M. Ivanoff is a Partner at Martin Clearwater & Bell LLP, where he defends client doctors, hospitals, health care systems, and other medical professionals in a wide range of medical malpractice and general liability matters.

Recent Appellate Division, Second Department Decision Has Potential to Allow Plaintiffs to Repeatedly Re-Commence Dismissed Actions

BY: BARBARA D. GOLDBERG, ESQ., RICHARD WOLF, ESQ. AND ANDREW J. FISHER, ESQ.

The Appellate Division, Second Department, recently issued a decision regarding CPLR § 205(a), commonly known as the “Savings Statute,” which has the potential for significant ramifications on civil practice. Specifically, in *Tumminia v. Staten Island University Hospital* (___

A.D.3d ___, 2025 N.Y. Slip Op. 03352 [2d Dep’t June 4, 2025]), the Second Department held that in many civil cases, a plaintiff may utilize CPLR § 205(a) more than once to re-commence an action dismissed for reasons other than those exceptions provided for in the statute. Thus, in many situations,

a plaintiff may now re-commence actions dismissed without prejudice a potentially unlimited number of times, posing a serious challenge to the defense bar’s ability to dispose of actions where a plaintiff lacks capacity or standing, or actions dismissed for other non-substantive grounds.

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Recent Appellate Division, Second Department Decision...

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Tumminia involved a scenario which frequently occurs: a plaintiff commences an action asserting wrongful death and/or a survival claim on behalf of a decedent, without first having been appointed as the Administrator or Executor of the decedent's Estate. The law is well-settled that such a "proposed" Administrator or Executor lacks legal capacity to commence or maintain an action. See *Carrick v. Cent. Gen. Hosp.*, 51 N.Y.2d 242, 249 (1980); *George v. Mt. Sinai Hosp.*, 47 N.Y.2d 170, 177 (1979). Thus, the defendant nursing home and defendant hospital in *Tumminia* successfully moved to dismiss the Complaint pursuant to CPLR 3211(a)(3) and Estates, Powers and Trusts Law § 5-4.1.

Just shy of six months after the dismissal, the plaintiff commenced a second, identical action pursuant to CPLR § 205(a). That statute provides:

"If an action is timely commenced and is terminated in any other manner than by a voluntary discontinuance, a failure to obtain personal jurisdiction over the defendant, a dismissal of the complaint for neglect to prosecute the action, or a final judgment upon the merits, the plaintiff, or, if the plaintiff dies, and the cause of action survives, his or her executor or administrator, may commence a new action upon the same transaction or occurrence or series of transactions or occurrences within six months after the termination provided that the new action would have been timely commenced at the time of commencement of the prior action and that service upon defendant is effected within such six-month period. Where a dismissal is one for neglect to prosecute the action made pursuant to rule thirty-two hundred sixteen of this chap-

ter or otherwise, the judge shall set forth on the record the specific conduct constituting the neglect, which conduct shall demonstrate a general pattern of delay in proceeding with the litigation."

If the plaintiff had been appointed the representative of the decedent's Estate prior to commencing the second action, that would have been the end of the story. However, the plaintiff again commenced the action as the "Proposed Executor" of the decedent's Estate, resulting in the defendants again moving to dismiss the Complaint for lack of legal capacity. The defendants also expressly sought that the dismissal be "with prejudice," arguing that the plaintiff was only entitled to one six-month extension of the statute of limitations pursuant to CPLR § 205(a). The trial court granted the defendants' motion and dismissed the action with prejudice.

The plaintiff appealed, and the Appellate Division, Second Department modified the Judgment, holding that "while the Supreme Court properly dismissed the instant complaint on the ground that the plaintiff had not yet obtained letters testamentary to become the personal representative of the decedent's estate, the dismissal should have been *without* prejudice instead of *with* prejudice." The Court first noted that without the operation of CPLR § 205(a), the statute of limitations would have expired during the pendency of the first action. Thus, a third action would only be timely – and a dismissal of the second action should be without prejudice as opposed to with prejudice – if the plaintiff could utilize CPLR § 205(a) more than once. The Court held that a third action "would have been

IF THE PLAINTIFF HAD BEEN APPOINTED THE REPRESENTATIVE OF THE DECEDENT'S ESTATE PRIOR TO COMMENCING THE SECOND ACTION, THAT WOULD HAVE BEEN THE END OF THE STORY. HOWEVER, THE PLAINTIFF AGAIN COMMENCED THE ACTION AS THE "PROPOSED EXECUTOR" OF THE DECEDENT'S ESTATE, RESULTING IN THE DEFENDANTS AGAIN MOVING TO DISMISS THE COMPLAINT FOR LACK OF LEGAL CAPACITY.

timely commenced at the time of the commencement of the prior action" (i.e., the second action), because "as a result of CPLR 205(a), the second action was timely. The fact that the second action was timely only as a result of the operation of CPLR § 205(a) does not detract from the fact that it was, in fact, timely, meaning that the third action 'would have been timely commenced at the time of commencement' of the second action." Thus, a plaintiff may utilize CPLR § 205(a) successively in a chain, and is not limited to one re-commencement of a dismissed action.

Prior to the Second Department's decision in *Tumminia*, the only appellate court to address this issue was the United States Court of Appeals for the Second Circuit, which came to the opposite conclusion in *Ray v. Ray* (22 F.4th 69 (2d Cir. 2021)). The *Ray* Court noted that if a plaintiff could utilize CPLR § 205(a) more than once, "[i]t would render meaningless the statute's requirement that 'the new action

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would have been timely commenced at the time of commencement of the prior action' and it would ... permit a litigant to frustrate the statute of limitations entirely by filing new actions within six months of dismissals, in perpetuity." 22 F.4th at 73. Despite this well-reasoned conclusion, the Appellate Division disagreed with the *Ray* Court, and noted that while in *Ray* the prior actions were dismissed for failure to state a cause of action, in *Tumminia* the dismissals were for lack of capacity. The Appellate Division noted that "[t]here may be situations where a plaintiff is unable to obtain letters of administration within six months through no fault of his or her own," and that "[i]n such a situation, it would be inequitable for an action to become barred by the statute of limitations." Notwithstanding this, the decision in *Tumminia* is not limited to dismissals based on lack of capacity, and any plaintiff may utilize CPLR § 205(a) multiple times to continuously re-commence actions, so long as none of the dismissals fit into one of the statutory exceptions.

While the Appellate Division's concern with the inequity that may arise due to a delay in the issuance of Letters of Administration to a diligent plaintiff may be admirable, the Court's decision applies equally to those plaintiffs who sit on their hands and do not diligent-

THE DEFENDANTS IN *TUMMINIA* HAVE FILED MOTIONS WITH THE NEW YORK STATE COURT OF APPEALS SEEKING LEAVE TO APPEAL THE APPELLATE DIVISION'S DECISION, AND THOSE MOTIONS REMAIN PENDING AS OF THE TIME OF THIS WRITING.

ly seek Letters from the Surrogate's Court. The Appellate Division did not, for instance, find that a plaintiff could utilize CPLR § 205(a) multiple times upon a finding that he or she exercised due diligence in attempting to cure his or her defect in capacity. Rather, the *Tumminia* decision has wide-ranging applicability to all civil actions dismissed for reasons other than the statutory exceptions, and regardless of the diligence of the plaintiff.

The defendants in *Tumminia* have filed motions with the New York State Court of Appeals seeking leave to appeal the Appellate Division's decision, and those motions remain pending as of the time of this writing. However, there is another twist to the *Tumminia* decision which may affect whether or when the Court of Appeals hears the appeals. On July 25, 2025, after the return dates

for both motions filed with the Court of Appeals, counsel for the plaintiff filed a letter noting that at the time the second action was commenced, the plaintiff had already died and a new administrator has not yet been appointed. Thus, counsel for the plaintiff has sought a stay of all proceedings, perhaps delaying any further appellate review of whether CPLR § 205(a) may be utilized by a plaintiff more than once.

In light of this, perhaps the simplest "solution," if one may call it that, is for the Legislature to amend CPLR § 205(a) to make clear that a plaintiff may only re-commence an action once. Indeed, the *Tumminia* Court noted that CPLR § 205(a) did not expressly state that a plaintiff could only obtain one six-month extension. In contrast, in 2022, the Legislature enacted the Foreclosure Abuse Prevention Act, which included the new CPLR § 205-a(2) expressly stating that in certain actions, including foreclosure actions, the original plaintiff cannot receive more than one six-month extension to re-commence a dismissed action. In order to prevent plaintiffs in non-foreclosure actions from "frustrate[ing] the statute of limitations entirely by filing new actions within six months of dismissals, in perpetuity" (*Ray*, 22 F.4th at 73), the Legislature could include a similar provision in CPLR § 205-a. ■



Barbara D. Goldberg is a Partner and Head of the Firm's Appellate practice group. Ms. Goldberg is well known for her appellate expertise in high exposure and complex cases and has handled hundreds of significant motions and appeals in State and Federal Courts.



Richard Wolf is a Partner at Martin Clearwater Bell LLP, and part of the Firm's Appellate practice group. He is well-versed in handling appellate matters, and was a former Senior Appellate Court Attorney at the Second Department of the New York Supreme Court.



Andrew J. Fisher is a Senior Associate at Martin Clearwater Bell LLP and an integral part of the Firm's Appellate practice group. His expertise covers civil appeals in a wide range of matters, including premises liability, personal injury, property law, and medical malpractice.

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Recent Case Results



Michael A. Sonkin



John A. Rohan



Shannon L. Stewart

Defense Verdict Secured in High-Exposure ER Cardiac Monitoring Case

Senior Trial Partner **Michael A. Sonkin**, with the assistance of Associates **John A. Rohan** and **Shannon L. Stewart**, successfully defended MCB's client hospital against allegations of medical malpractice, culminating in a defense verdict in the Bronx Supreme Court after a two-and-a-half-week trial.

The 22-year-old decedent presented to the emergency room of MCB's insured 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 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.

Appellate Division Affirms Judgment Entered Pursuant to Defense Verdict in Complex Medical Malpractice Suicide Case: A Major Success for MCB and Our Firm's Appellate Team

Retired Senior Trial Partner **Sean F.X. Dugan** and Partner **Michael B. Manning** successfully secured a defense verdict on behalf of MCB's client hospital in a complex medical malpractice action with very significant damages exposure.

Defense of the action required them to refute numerous claims regarding the improper administration of psychotropic medications and failure to recommend the appropriate follow-up care post discharge. Following the defense verdict, **Appellate Partner Barbara D. Goldberg** and Mr. Manning successfully defended against the plaintiff's motion to set aside the verdict in the Trial Court. Most recently, Ms. Goldberg successfully defended the case on appeal, obtaining an affirmance of the Judgment entered pursuant to the defense verdict, and concluding a case that has been ongoing since 2014.

The action was a wrongful death action in which the plaintiff alleged that the psychiatric care provided by MCB's client hospital during a series of admissions from 2008 through a final hospitalization in 2012 contributed to a suicide attempt and eventual death of the decedent. Among other claims, the plaintiff argued that a continuous course of negligent treatment tolled the statute of limitations, so that every admission during this time period was potentially at issue. In March 2020, following a jury trial, the jury found that there was no continuous course of treatment, thereby eliminating the plaintiff's allegations of malpractice for all but the final hospitalization. With respect to that hospitalization, the jury found that the hospital did not depart from good and accepted medical practice. Accordingly, MCB secured a full defense verdict. Thereafter, the plaintiff moved pursuant to CPLR 4404(a) to set aside the jury verdict in the interest of justice or as contrary to the weight of the evidence and for a new trial. In an Order dated June 29, 2020, the Supreme Court denied the motion. On November 6, 2020, the Court entered a Judgment in favor of the defendant hospital and against the plaintiff dismissing the complaint.



Sean F.X. Dugan



Michael B. Manning



Barbara D. Goldberg

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Thereafter, the plaintiff appealed from the Judgment, challenging multiple evidentiary rulings and claiming the verdict was contrary to the weight of evidence. Ms. Goldberg skillfully handled all aspects of the appeal, resulting in a full affirmance of the Judgment. In a Decision and Order dated May 28, 2025, the Appellate Division, Second Department, found that the trial court properly exercised its discretion with respect to several evidentiary rulings challenged by the plaintiff; that another evidentiary ruling had no impact on the outcome; and that the verdict finding that MCB's client hospital met the standard of care was supported by a fair interpretation of the evidence.



Michael J. Boranian

Directed Verdict Achieved and Affirmed in Postoperative Complications Case

Partner **Michael J. Boranian** had previously successfully obtained a directed verdict on behalf of his client, a hospital and its critical care specialist, following a transfer from a co-defendant hospital, regarding the care of the then 30-year-old female plaintiff. 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 co-defendant 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 Secured in Orthopedic Treatment Case

Partner **Michael J. Boranian**, Of Counsel **Andrew W. Zarriello** and Associate **Timothy M. O'Toole** successfully secured a unanimous defense verdict in a case involving 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 been seen by two other orthopedists and had undergone an MRI in July 2014.



Michael J. Boranian



Andrew W. Zarriello



Timothy M. O'Toole

MCB's client examined the teenager, took x-rays, and confirmed and treated the OCD lesion. After casting the foot and discharging the plaintiff, she resumed athletic activities, including High School and other competitive basketball. Nearly two years later—during which time she had not seen any physician for complaints related to the foot—she returned to the practice and was seen by another physician in the group, again complaining of a sprained left ankle. An MRI performed at that time again documented the presence of the OCD lesion and, for the first time, found a left calcaneal cyst, further referencing a "tiny" cyst visible on the prior 2014 MRI from the same radiology group and not previously diagnosed or referenced. The patient subsequently sought treatment from another surgeon, who performed curettage and bone grafting. As of the time of trial, the patient had not received any follow-up care between August 2017 and March 2025, when she was seen by a podiatrist.

At trial, it was alleged that the defendant failed to properly advise and communicate the x-ray findings of a calcaneal cyst during the 2014 treatment. Throughout the case, MCB's client maintained that the cyst was a benign, incidental, asymptomatic



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finding, not documented on the July 2014 MRI, and that he had the right to rely on the MRI results, which did not indicate any pain in the area.

Through cross-examination of the plaintiff's expert, and with testimony from MCB's expert orthopedist, we established that an MRI is the more sensitive diagnostic tool, that the treating physician has the right to rely upon the radiologist's findings, and that neither the 2014 nor the 2016 MRI revealed any objective documentation of pain or injury to the heel. Rather, all of the patient's complaints were related to the OCD lesion, which was appropriately addressed and successfully treated.

After two hours of deliberation over lunch, the jury returned a unanimous verdict in favor of MCB's client.



Thomas A. Mobilia



Jacqueline D. Berger



Stephen C. Lanzone

Summary Judgment in Hysterosalpingogram Case

Senior Trial Partners **Thomas A. Mobilia** and **Jacqueline D. Berger** and Associate **Stephen C. Lanzone** successfully secured summary judgment in a case concerning 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 co-defendant gynecologists. During the procedure,

a hydrosalpinx was diagnosed. The plaintiff later developed a pelvic infection, resulting in removal of the affected fallopian tube and one ovary. The 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 sending results timely 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 co-defendants to fulfill their duties after the report was timely sent to them.

Despite plaintiff's submission of an opposition to our motion utilizing an expert, 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 Case Alleging Failure to Monitor High-risk Pregnancy

Senior Trial Partner **Laurie Ann Annunziato**, Partner **Adam T. Brown**, and Senior Associate **Kristen E. Griffin** successfully secured summary judgment for MCB's client, an OB/GYN, in a case alleging failure to properly manage and treat low amniotic fluid and concerning biophysical profile.



Laurie Ann Annunziato



Adam T. Brown



Kristen E. Griffin

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

Two days later, the plaintiff 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. MCB was 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.



Case Results

CONTINUED FROM PREVIOUS PAGE



Rosaleen T. McCrory



Samantha E. Shaw

Summary Judgment in Cancer Recurrence Case

Senior Trial Partner **Rosaleen T. McCrory** and Partner **Samantha E. Shaw** secured summary judgment for MCB's clients – an oncologist and a hospital, in a case alleging failure to monitor for cancer recurrence, resulting in a delayed diagnosis of incurable Stage IV renal cell carcinoma (RCC). The plaintiff also asserted claims for lack of informed consent, vicarious liability, and negligent hiring/supervision.

The plaintiff began treatment with MCB's clients in 2013 for diffuse large B-cell lymphoma following a 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, the 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 the plaintiff was referred to his PCP and other specialists to address the non-specific complaints.

In January 2020, the plaintiff's PCP documented the plaintiff's complaints and referred him for a second oncology opinion. Ultimately, the plaintiff was referred for imaging, which led to a diagnosis of metastatic RCC. The 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 the 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.

The 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 clients met the standard of care and could not be held liable for an alleged failure to detect an unrelated condition. ■

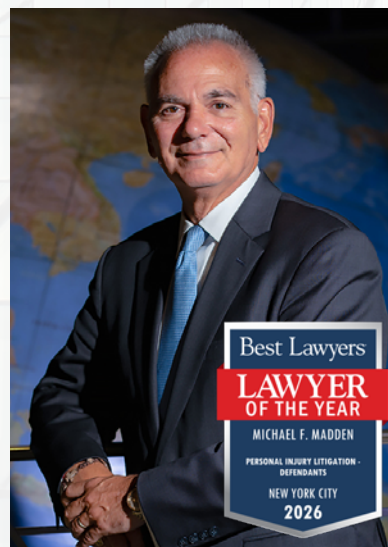
Outstanding Achievements



KENNETH R. LARYWON HONORED WITH 2025 MPL INDUSTRY DEFENDER AWARD

MCB is pleased to announce that the Medical Professional Liability Association has selected Senior Trial Partner Kenneth R. Larywon as one of its five recipients

of the 2025 MPL Industry Defender Award! This annual award is presented to honor defense attorneys for their "exceptional and outstanding lifelong contributions to defending physicians, other healthcare professionals, and institutions while supporting medical professional liability insurers."



MICHAEL F. MADDEN NAMED BEST LAWYERS® 2026 PERSONAL INJURY LITIGATION DEFENSE "LAWYER OF THE YEAR" IN NEW YORK CITY

We are proud to congratulate Senior Trial Partner and MCB Managing Partner Michael F. Madden on this well-earned achievement. Only about 5% of all practicing U.S. attorneys earn a Best Lawyer distinction, which underscores the award's exclusivity.

What's New at MCB?



MCB PARTNERS NOMINATED FOR MEDPRO AND MLMIC RISING STARS PROGRAM

MCB is proud to announce that Partners Elizabeth J. Sandonato and Michael B. Manning were nominated for the MedPro and MLMIC "Rising Stars" program, which was created to honor the potential of attorneys who are viewed as the future of the MPL defense trial bar.



Elizabeth J. Sandonato



Michael B. Manning

MCB CONGRATULATES 29 ATTORNEYS RECOGNIZED BY BEST LAWYERS®



From top left to bottom right: Laurie A. Annunziato, John J. Barbera, William P. Brady, Peter T. Crean, Barbara D. Goldberg, Kenneth R. Larywon, Jeff Lawton, Michael F. Madden, Rosaleen T. McCrory, Thomas A. Mobilia, Charles S. Schechter, and Michael A. Sonkin



From top left to bottom right: Nicole S. Barresi, Brandon J. Fernandes, Emma B. Glazer, Michael Goitein, Kristen E. Griffin, Casey M. Hughes, Victor M. Ivanoff, Amy E. Korn, Stephen C. Lanzone, Michael B. Manning, Fiachra P. Moody, Gabrielle F. Murray, Graham T. Musynske, John Rohan, Kerona K. Samuels, Jennifer M. Wanner, and Richard Wolf

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KAREN CORBETT PRESENTS AT NATIONWIDE®

Senior Trial Partner Karen B. Corbett presented to Nationwide® Insurance on *The Valuation of Nursing Home Cases*.



Justin J. Provvido
Karen B. Corbett

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