Defense Practice
UPDATE

MARTIN CLEARWATER & BELL LLP

SPRING 2026

In this Issue:

Hospital Liability and the Private Attending Physician: A Path to Summary Judgment

BY: CHARLES S. SCHECHTER, ESQ. AND ANINA H. MONTE, ESQ.

Many times, medical malpractice cases will be alleged against both a private voluntary attending physician and the hospital where that physician has privileges to practice. When those cases involve allegations of negligence for surgical complications, there is an available avenue for summary judgment for the hospital. In those settings, it is essential to develop the necessary facts to demonstrate that the private attending remained the primary physician in charge of the plan of treatment to help facilitate summary judgment. One of the few remaining areas where a hospital cannot be held liable for malpractice is when it can be demonstrated to the Court that the patient remained a private patient and where the private physician remained the primary decision maker for the patient's plan of treatment.

A patient is a private patient of a physician under several settings, but often before ever seeking surgical and hospital-based intervention, a patient has been seen by a physician in their office, has been diagnosed with a condition, and a treatment plan has been discussed and decided upon. Only then is the patient electively scheduled for surgery. In this setting the patient will present to the hospital for same-day surgery, and will be admitted to the hospital under the service of their private surgeon.

ONE OF THE FEW REMAINING ARE AS WHERE A HOSPITAL CANNOT BE HELD LIABLE FOR MALPRACTICE IS WHEN IT CAN BE DEMONSTRATED TO THE COURT THAT THE PATIENT REMAINED A PRIVATE PATIENT AND WHERE THE PRIVATE PHYSICIAN REMAINED THE PRIMARY DECISION MAKER FOR THE PATIENT'S PLAN OF TREATMENT.

This factual scenario is different from those instances when a patient presents to a hospital through the emergency department; or only meets their doctor for the first time upon presentation and admission. In those settings, the hospital may not be able to demonstrate that the patient is a private patient, therefore

»

Hospital Liability and the Private Attending Physician: A Path to Summary Judgment

CONTINUED FROM PREVIOUS PAGE

the hospital may not be able to remain insulated from liability.

Yet, when the patient is admitted electively for a planned procedure, the hospital should be able to demonstrate to the Court its entitlement to summary judgment as a matter of law. The law on this remains clear: when a patient fails to allege an individual theory of negligence against the hospital, then as long as the nursing, resident, and midlevel practitioner staff have followed the orders and plan of treatment of the private attending, demonstrating timely communication to the private attending, the hospital should remain insulated.

In a recent case before the Supreme Court, Queens County, MCB was able to once again demonstrate this principle. The plaintiff was the private patient of a named codefendant surgeon, who sought treatment for a known kidney mass/tumor. The surgeon saw him in his outpatient offices, during which time they planned for the patient to be admitted for surgical resection of the tumor. The surgeon planned and scheduled the surgery, which took place at MCB's client hospital. Post-operatively, the patient was admitted to the hospital for monitoring and care. Following the procedure, the codefendant private surgeon remained the primary attending of record, seeing the patient daily and following his course of treatment. The patient was seen by resident physicians, midlevel medical providers, and nursing staff, all of whom evaluated the patient and then communicated changes in his condition to the primary surgeon.

Three days postoperatively, concern was raised for an intra-abdominal process. The codefendant ordered a CT scan for evaluation, which was taken and interpreted timely. That CT scan was interpreted by a named codefendant radiologist and the results were timely reported to the primary surgeon, who continued post operative monitoring and called for input from general surgery consultation. Through testimony and the medical record, MCB was able to demonstrate to the court that the work up and evaluation of the patient was timely carried out and consistent with the orders of the codefendant.

> PUBLIC HEALTH LAW §2805 AND THE INTERPRETING CASE LAW SPECIFICALLY HOLDS THAT IT IS THE NON-DELEGABLE DUTY OF THE PRIVATE ATTENDING PHYSICIAN TO OBTAIN INFORMED CONSENT FROM THE PATIENT PRIOR TO THE PROCEDURE.

The Court agreed that the record and evidence demonstrated that the patient was followed by the private attending, who issued the orders for further work up and treatment. The Court further held that there was no failure on the part of the hospital staff, including its nursing and medical staff, to follow the orders and plan of the surgeon. Any change in the patient's care was properly reported to the private attending, and any changes in the treatment plan were correctly carried out. By demonstrating that the staff appropriately followed the plan, and that the plan was within the standard of care, we were able to demonstrate the hospital's entitlement to summary judgment.

The record also clearly showed, through the testimony of the parties, that the informed consent discussions occurred prior to the admission. Public Health Law §2805 and the interpreting case law specifically holds that it is the non-delegable duty of the private attending physician to obtain informed consent from the patient prior to the procedure. Even when the hospital has documented the informed consent discussion, it remains the obligation of the primary attending physician to ensure that the risks, benefits, and alternatives to the treatment, have be discussed with the patient. Before the Court, there was full demonstration that the private attending sufficiently fulfilled this obligation and obtained informed consent, which was documented in his private records as well as the hospital record.

In an effort to keep the hospital in the litigation, plaintiff, for the first time in opposition, raised a new theory against the hospital. The Courts are clear that a non-moving party may not oppose an otherwise sufficient showing of entitlement to summary judgment by raising new theories in opposition. In this setting, plaintiff claimed that the CT scan that was ordered by the private attending was not performed with oral contrast, which they claimed was in opposition to the order that was given. However, it was easily demonstrated through the medical record and the medication administration sheets that the CT scan was ordered with oral contrast and that the oral contrast was given to the patient. The Court specifically held that this attempt to raise a new theory against the moving defendants to defeat the motion was improper, and further, that the new theory was clearly

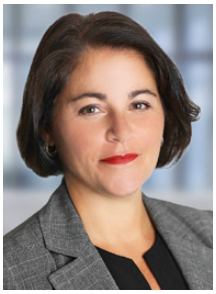
»

CONTINUED FROM PREVIOUS PAGE

controverted by the medical records. This holding is consistent across all substantive cases, in that it is improper to raise a new theory in opposition to an otherwise proper showing of entitlement to summary judgment. This principle is consistently upheld by the Courts, as it prevents prejudice to the moving party, who has not had the opportunity to explore or vet and refute the new theory during discovery.

This decision supports the long-held precedent that a hospital cannot be held liable for the claimed negligence of a private attending physician. To be successful in the motion for summary judgment, it is essential to consider the motion from the start of the case, and what will be needed to demonstrate that there was no act by the hospital staff that deviated from the treatment plan, that all orders and plans were timely carried out and followed, and that there was prompt and full communication as to any changes in the patient condition. A well-document hospital chart, and the careful and correct questioning of the plaintiff and private attending during the deposition are helpful for this purpose. ■

Charles S. Schechter is a Senior Trial Partner at Martin Clearwater Bell LLP. Using a near-photographic memory and an aggressive, tailored approach, he vigorously defends the Firm's clients in complex medical malpractice matters.



Anina H. Monte is a Partner at Martin Clearwater Bell LLP, where she leverages her background in biology and human anatomy to simplify complex medical issues for juries, skilfully defending healthcare professionals against liability and malpractice claims.

The Implications of Informal Provider Communications

BY: ELIZABETH J. SANDONATO, ESQ. AND JUSTIN J. PROVVIDO, ESQ.

In the setting of highly specialized medicine, where care is multidisciplinary and team-based, effective communication is vital to patient care and positive outcomes. Equally important, however, is the medium through which that communication occurs. Less formal channels – most notably text messaging, e-mails, and the like – may appear efficient and convenient, but they introduce significant, and often avoidable, legal and regulatory risks. What is gained in speed can be lost in control, security, and ultimately, defensibility. Moreover, these informal exchanges frequently lack the context, precision, and permanence of formal charting and communications, thereby increasing the likelihood of misinterpretation or incomplete communication among providers. In a field where nuance matters, a truncated or ambiguous message can have downstream clinical and legal consequences that far outstrip the convenience it initially provided.

To that end, it is often overlooked that text messages between providers are considered discoverable party statements. *Fusco v. Mace Ave. Med., P.C.*, 209 A.D.3d 561 (1st Dept). In other words, casual or shorthand exchanges about patient care may later be scrutinized in litigation with the same weight as formal documentation. Compounding this risk is the Health Insurance Portability and Accountability Act ("HIPAA"), a comprehensive statutory framework designed to safeguard personal health information ("PHI"). In particular, the

IT IS OFTEN OVERLOOKED THAT TEXT MESSAGES BETWEEN PROVIDERS ARE CONSIDERED DISCOVERABLE PARTY STATEMENTS. CASUAL OR SHORTHAND EXCHANGES ABOUT PATIENT CARE MAY LATER BE SCRUTINIZED IN LITIGATION WITH THE SAME WEIGHT AS FORMAL DOCUMENTATION.

»

The Implications of Informal Provider Communications

CONTINUED FROM PREVIOUS PAGE

HIPAA Security Rule governs the maintenance of medical records and establishes national standards to protect electronic PHI. It requires providers to maintain reasonable and appropriate administrative, technical, and physical safeguards and to ensure the confidentiality, integrity, and availability of the electronic PHI they create, receive, and transmit. In practice, compliance is delegated to the institution or individual provider, making it their responsibility to ensure that PHI is properly stored, transmitted, and secured. Informal communication methods – especially those conducted over unsecured or personal devices – may fall short of these requirements, exposing providers and institutions to regulatory scrutiny, data breaches, and potentially significant financial penalties. These risks are further amplified where institutions lack uniform policies governing electronic communications, or where providers utilize a patchwork of personal devices and applications that are not subject to centralized oversight or retention protocols.

Against that backdrop, the risks associated with informal provider communications do not end with their creation or transmission. Rather, the ways in which such communications are preserved – or not preserved – can carry equally significant legal consequences. As courts increasingly grapple with the prevalence of informal electronic communications in healthcare, the deletion, loss, or fragmentation of text messages is expected to emerge as a recurring issue, which can give rise to spoliation claims and requests for evidentiary sanctions. In many instances, these communications exist outside of traditional recordkeeping systems, making them more vulnerable to inadvertent deletion, device replacement, or routine data purges that occur without regard to pending or anticipated litigation.

WHERE A COURT DETERMINES THAT A DEFENDANT FAILED TO PRESERVE RELEVANT COMMUNICATIONS, IT MAY ISSUE AN ADVERSE – OR "'NEGATIVE" – INFERENCE INSTRUCTION, PERMITTING THE JURY TO CONCLUDE THAT THE MISSING EVIDENCE WOULD HAVE BEEN UNFAVORABLE.

Indeed, once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and implement a "litigation hold" to ensure the preservation of relevant materials. *VOOM HD Holdings LLC v. EchoStar Satellite L.L.C.*, 93 A.D.3d 33 (1st Dept 2012). This obligation extends beyond traditional records and may encompass electronically stored information, including text messages. The failure to preserve such material could result in sanctions for spoliation of evidence. To obtain such sanctions, the moving party must establish: (1) that the party with control over the evidence had an obligation to preserve it at the time of destruction; (2) that the evidence was destroyed with a culpable state of mind; and (3) that the destroyed evidence was relevant to a claim or defense such that a factfinder could conclude it would have supported that position. *Id*. Notably, a "culpable state of mind" includes ordinary negligence. *Id*.

In medical malpractice litigation, spoliation issues frequently arise in the context of missing or incomplete medical records. In *Madkins v. State of New York*, a case sounding in medical malpractice, the plaintiff moved to strike the defendant's answer due to the loss of fetal monitoring strips. The Second Department held that such records were required to be preserved by regulation. Although the Court declined to strike the defendant's answer, it determined that the loss of the records, and the resulting prejudice, warranted an adverse inference charge at trial. *Madkins v. State of New York*, 82 A.D.3d 1174 (2d Dept 2011). Similarly, in *Rodman v. Ardsley Radiology, P.C.*, a case involving the alleged failure to diagnose breast cancer, the unexplained loss of mammogram films led the court to permit a negative inference instruction at the time of trial. *Rodman v. Ardsley Radiology, P.C.*, 80 A.D.3d 598 (2d Dept 2011).

The foregoing principles of spoliation could apply with equal force to informal communications. Where a court determines that a defendant failed to preserve relevant communications, it may issue an adverse – or "negative" – inference instruction, permitting the jury to conclude that the missing evidence would have been unfavorable. Such an instruction, while not dispositive, can be highly influential. In cases where clinical judgment, timing, and provider communication are central, text messages may offer a contemporaneous window into the decision-making processes. Their absence, therefore, allows a jury to infer that the missing content would corroborate the

»

The Implications of Informal Provider Communications

CONTINUED FROM PREVIOUS PAGE

plaintiff's theory of liability, thereby reshaping the evidentiary landscape and adding an element of risk to the defense of a medical malpractice case.

While the solution is straightforward in theory, implementation can be challenging in practice, particularly within large and decentralized health systems, where it is difficult to ensure compliance. Still, prudent risk management requires clear policies, consistent training, and the use of secure, compliant communication platforms. Institutions should consider adopting messaging systems that integrate with the electronic medical record and maintain auditable records of communications. At a minimum, healthcare providers should exercise caution and avoid informal, unsecured messaging when discussing patient care. By doing so, they not only enhance patient privacy and regulatory compliance, but also mitigate against the risk of improperly disposing of evidence, which could prove detrimental in future litigation. ■

Elizabeth J. Sandonato is a Partner at Martin Clearwater Bell LLP. As a highly accomplished civil litigation attorney with over two decades of experience, she specializes in high-stakes medical malpractice and nursing home negligence defense.

Justin J. Provvido is an Associate at Martin Clearwater Bell LLP, where he defends the Firm's client doctors, hospitals, health care systems, and other medical professionals in a variety of medical malpractice matters.

Cybersecurity Through a Business Risk Lens

BY: STEVEN J. SKIDMORE, DIRECTOR OF IT & RECORDS MANAGEMENT

Managing cybersecurity through a business risk lens, rather than viewing it solely as an IT issue, shifts the focus from breaches and malware to how the organization protects itself from operational, financial, reputational, and regulatory risks.

Too often, organizations fail to recognize cybersecurity as a business risk. Business leaders may underestimate the true impact of an attack, particularly the cost of system downtime. Many hear the word "cybersecurity" and think of firewalls, antivirus software, and other technical tools. Instead, the conversation should focus on how to preserve business stability.

Focusing on preventing every cyber-attack is not sustainable. No organization can be one hundred percent successful in stopping every threat all the time. The reality is that it is no longer a question of whether a cyber-attack will occur, but when. This is why it is critical to assess business risks and understand the impact a cyber incident can have across the organization.

Before an organization can measure cybersecurity risk, a risk assessment is needed to identify the critical functions required to keep the business running. Risk assessments usually begin with operational risk, as disruptions to daily operations immediately impact the ability to serve clients and business partners. The impacts are felt across the organization, with productivity coming to a halt; systems go down, emails cannot be sent, data becomes inaccessible, and employees are unable to perform their jobs.

TOO OFTEN, ORGANIZATIONS FAIL TO RECOGNIZE CYBERSECURITY AS A BUSINESS RISK. MANY HEAR THE WORD "CYBERSECURITY" AND THINK OF FIREWALLS, ANTIVIRUS SOFTWARE, AND OTHER TECHNICAL TOOLS. INSTEAD, THE CONVERSATION SHOULD FOCUS ON HOW TO PRESERVE BUSINESS STABILITY.

Cyber incidents can arise from many factors, but human error often plays a key role. Employees who are under pressure, distracted, or multitasking may click on a suspicious link without carefully reviewing an email. The

CONTINUED FROM PREVIOUS PAGE

impact of one misstep can grant an attacker access to an entire system.

Building a layered approach around sensitive data assets and essential services will lessen the impact. Implementing cybersecurity awareness training, installing failover systems, and segmenting systems by department or business function are all effective measures for strengthening a security posture. Steps like these can help prevent a complete system failure and minimize downtime—because when operations stop, financial consequences quickly follow.

Financial risk occurs when a cyber event causes direct or indirect financial losses, and those losses do not always look the same way. Financial risk frequently follows operational risk because failures involving people, systems, or processes often result in financial loss. These indirect losses are the result of operation risk fallout, where the cyber incident created financial losses due to system rebuilds, computer forensic specialists, and increased cyber insurance premiums.

In some cases, financial risk arises on its own where the focus is not on operational disruption, but on a direct attack on the organization's financial integrity. For example, if a threat actor compromises a payment system and changes banking information, payments may be redirected to the attacker's account. If employees cannot trust the financial data on their computer screens, the organization may be unable to validate account information, approve transactions, or make reliable business decisions. This is why strong authentication and access controls are essential. They ensure that only authorized users can access and modify sensitive financial information.

> THE REALITY IS THAT IT IS NO LONGER A QUESTION OF WHETHER A CYBER-ATTACK WILL OCCUR, BUT WHEN.

Regulatory risk arises when a cyber event causes an organization to violate laws, regulations, or industry standards related to protecting sensitive data. As mentioned earlier, cybersecurity is more than an arsenal of tools. It is about creating a security posture that not only prevents cyber events but builds a defensible compliance framework. Regulatory risk is often triggered by a data breach, particularly when a threat actor gains unauthorized access to protected information. For example, a ransomware attack may begin as an operational disruption but can quickly become a regulatory problem if privileged data is accessed or exfiltrated. If the data includes protected health information, then HIPAA breach notification obligations may be triggered, requiring notice to regulators and affected individuals.

Limiting regulatory risk begins with audit readiness. An organization should be able to demonstrate that safeguards are in place, employees are trained, and that retention policies and incident response plans exist. The goal is not only to avoid fines and penalties, but to show the organization took the time to build a compliance structure that protects the information entrusted to it. While fines and penalties can be paid, restoring lost trust is far more difficult.

Reputational risk arises when a cyber incident damages the confidence that clients, business partners, and employees have in an organization. It is one of the most significant cybersecurity-related risks because the damage is often long-lasting and harder to repair. Systems can be rebuilt and passwords reset, but once confidence in an organization's ability to protect sensitive information is questioned, rebuilding that trust is far more challenging. Reputational harm does not require a massive cyberattack it can come from a small incident, such as a misdirected email containing privileged information, which can appear careless and preventable.

The reputational impact is shaped not only by the cyber incident, but also by how the organization responds. Those affected by the incident may be more forgiving if the organization responds quickly to demonstrate that necessary steps were taken both to address the issue and to strengthen its security posture.

The goal is not to eliminate every cyber threat, which is not possible. Rather, the goal is to reduce the likelihood and impact of a cyberattack by strengthening the organization's critical business units. When cybersecurity is viewed through a business risk lens, it becomes clear that strong security practices protect revenue, preserve client trust, reduce system downtime, and support business continuity.

Remember, it is not a question of *if* a cyber event will occur, but *when*. ■

Steven J. Skidmore is the IT Director at Martin Clearwater & Bell LLP. With 30+ years of IT experience, he develops, implements and oversees the Firm's robust technology infrastructure; analyzes emerging technologies; and addresses all security risks.

Recent Case Results

Jacqueline D. Berger

Defense Verdict in Ischemic Optic Neuropathy Case

Senior Trial Partner **Jacqueline D. Berger** successfully obtained a unanimous defense verdict on February 13, 2026, in Queens County Supreme Court in favor of MCB's ophthalmology client following a three-week trial.

The plaintiff was a then 54-year-old married female who went completely blind with no light perception. MCB's client, an ophthalmologist, was accused of negligent care on March 10, 2017, when he was called from the ER for an ophthalmology consult at 4 a.m. for a patient with partial vision loss in the left eye. Multiple examinations had already been performed in the ER, including a stroke workup and ocular ultrasound, which were negative. The patient had a history of ulcerative colitis and a rectal bleeding event prior to her ER presentation, and she was slightly anemic, with a hemoglobin of 8.7. MCB's client ophthalmologist advised the ER staff that he and his resident could come into the ER immediately for a partial examination, then perform a full examination later in the clinic, or conduct a one-time evaluation in the clinic as soon as it opened four hours later, at 8:30 a.m. The ER staff gave that choice to the plaintiff, who chose to go home and then proceed to the clinic in four hours. The ER staff discharged her with that follow-up appointment, for four hours later, and she was visually and hemodynamically stable.

At the ophthalmology clinic presentation, a full workup ensued for 3 hours, and the diagnosis was still unclear. The patient fainted toward the end of the visit, at which time MCB's client ophthalmologist determined that the likely diagnosis was ischemic optic neuropathy from blood loss, now that it was known that the patient was unstable and that her hemoglobin and/or blood pressure may have dropped since the ER. A hemoglobin of 8.7 is not compatible with a diagnosis of ischemic optic neuropathy from blood loss since typically, the hemoglobin level is less than 7 with this diagnosis. The patient was sent back to the hospital immediately with the presumed diagnosis and a treatment plan, including blood pressure control and blood transfusions. Over the next few days, the plaintiff had additional rectal bleeding events, drops in hemoglobin levels as low as 7.0, and multiple transfusions while being cared for by the medical and hospitalist staff. While plaintiff's partial vision remained static up to this point, she woke up on day 3 of her hospitalization completely blind.

The plaintiff claimed that MCB's client ophthalmologist should have examined the patient in the ER, made the diagnosis, and started treatment earlier, thereby avoiding the fainting episode at the clinic visit, which may have contributed to the insult to her optic nerves. Ms. Berger, with the use of ophthalmology and neuro-ophthalmology experts, demonstrated that the equipment in the ER was not sufficient to diagnose this patient's condition and that advanced equipment in the clinic was necessary. It was further established that, based on the information MCB's client ophthalmologist had at the time; the call from the ER at 4:00am, the patient was stable to come to the clinic, as reported by the ER staff. The experts also testified that there is no reliable treatment for ischemic optic neuropathy from blood loss and that plaintiff's "loss of chance" theory was complete conjecture; there was no credible evidence that seeing the patient four hours earlier in the ER would have prevented blindness three days later or reversed the partial vision loss she already had. Plaintiff's counsel asked the jury to award $45 million to the plaintiff and her husband, which the jury rejected for MCB's client ophthalmologist.

Summary Judgment Secured in Alleged Birth-Related Hip Injury Case

Kenneth J. Burford

Brandon J. Fernandes

Sarah E.T. Ertle

Partner **Kenneth J. Burford**, and Senior Associates **Brandon J. Fernandes** and **Sarah E.T. Ertle** successfully obtained summary judgment, in New York Supreme Court, in a case involving a then 29-year-old pregnant female with a significant history of backpain and generalized body aches who had a normal pregnancy until 32 weeks gestation; at 32 weeks, she reported groin/upper leg pain and lower back pain. She presented to the hospital with contractions. After consultation with the obstetric staff, she desired a trial of labor after a prior Cesarean section. Plaintiff delivered a healthy baby, and complaints of perineal and abdominal pain were resolved with pain medication. Eight weeks later, plaintiff complained of pelvic and right lower back pain, which she stated had been ongoing since she was seven months pregnant. A pelvic X-ray on March 13, 2017, revealed no significant findings. She continued to complain of pelvis, hip, back, and leg pain.

On January 22, 2018, over a year after giving birth, a pelvic MRI showed a "possible tear of the anterosuperior right acetabular labrum." Plaintiff alleged that the hip injury was a result of her positioning during the delivery. MCB was able to show, through

»

CONTINUED FROM PREVIOUS PAGE

experts in obstetrics and orthopedics, that the delivery, including positioning, was not the cause of any hip injury (assuming one existed). Additionally, plaintiff's claims of negligent hiring, supervision, and retention were deemed "unviable," and Judge Engoron granted summary judgment.

Daniel L. Freidlin

Casey M. Hughes

Keleisha A. Milton

Defense Verdict Secured in Breast Cancer Alleged Failure-to-Diagnose Case

Senior Trial Partner **Daniel L. Freidlin**, Partner **Casey M. Hughes** and Associate **Keleisha A. Milton** successfully obtained a defense verdict in Nassau County Supreme Court in a case involving MCB's client, a breast radiologist and radiology group, where the then 53-year-old plaintiff alleged a failure to diagnose breast cancer on a breast ultrasound. Plaintiff alleged that a nodule identified at the 7:00 position of the right breast, 1 cm from the nipple, was ill-defined, spiculated, and suspicious for cancer.

MCB demonstrated that the nodule was not spiculated, but rather macrolobulated (a benign feature) and benign in appearance. Plaintiff's ultrasound studies dating back over a decade demonstrated fluctuating multiple bilateral well-circumscribed hypoechoic nodules (MBWCHN). Our expert radiologist testified, and the plaintiff's expert agreed on cross-examination, that a biopsy is not necessary in the setting of a patient with MBWCHN, provided that the new nodule has similar benign characteristics. MCB argued that our client radiologist appropriately, and within the standard of care, assessed the nodule as BIRADS-2 benign.

One year later, the plaintiff developed breast cancer at the 6:00 axis, 3 cm from the nipple. Following biopsy, the patient's cancer was staged as IIIB and determined on pathology to be a triple-negative breast cancer. MCB argued that this was a different anatomic location, that the nodule from one year earlier had resolved, and that this was a new interval cancer that had developed since the prior screening exam. We demonstrated that triple-negative breast cancer is extremely fast growing, such that it was not possible for the .9 x .5 x .4 cm nodule from one year earlier to have been the same lesion as the 1.8 x 1.4 x 1.4 cm cancer that later developed. After over one day of deliberations, the jury returned a defense verdict.

Defense Verdict Obtained in Lumbar Microdiscectomy Case Alleging Chronic Pain Syndrome

Michael A. Sonkin

Amy E. Korn

Lauren Bisogno

Senior Trial Partner **Michael A. Sonkin**, Partner **Amy E. Korn**, and Senior Associate **Lauren Bisogno** successfully obtained a defense verdict in New York County Supreme Court in a case involving the decision to recommend and offer an L4/5 microdiscectomy by MCB's clients, a neurologist and neurosurgeon, to the then 47-year-old plaintiff who was experiencing a disc herniation at L4/5 with severe, debilitating pain, as well as diminished neurologic function in her lower extremity. Plaintiff alleged, that as a result of the microdiscectomy, she developed a permanent chronic pain syndrome which included neuropathic pain, allodynia, and hypersensitivity. These injuries were alleged to have not only caused severe, permanent pain and suffering, but also caused her to lose her corporate attorney career with very substantial lost earnings.

MCB demonstrated at trial that the decision to offer the above surgery was appropriate and was offered along with additional options, including an epidural steroid injection and medical pain management. It was claimed that the defendants should not have recommended surgery, but the defense successfully demonstrated that the recommendation was made only after the patient expressed the desire for rapid relief and return of function, for which surgery was the best option.

MCB further demonstrated at trial that the plaintiff's alleged injuries were not the result of the microdiscectomy, but rather the result of the improper prescription and management of opioids by a non-party pain management physician, as well as that non-party physician's performance, 12 months after the subject surgery, of a contraindicated thermal lesioning procedure of nerves for facet syndrome of the lumbar spine.

The trial lasted over 6 weeks, including jury selection. After one hour of deliberations, the jury returned a defense verdict in favor of MCB's neurologist and MCB's neurosurgeon.

»

Case Results

CONTINUED FROM PREVIOUS PAGE

Jeff Lawton

Defense Verdict in Case Involving a Foot Drop and Alleged Missed Vascular Diagnosis

Senior Trial Partner **Jeff Lawton** successfully obtained a defense verdict in Monroe County Supreme Court in a case involving a 65-year-old man who presented with acute pain in his left foot and was diagnosed with a foot drop. MCB's neurosurgeon clients reviewed prior imaging and performed a physical examination, concluding that the foot drop was caused by nerve compression at L5-S1. Surgery was recommended within two days.

The following day, the patient developed a cold foot with discoloration. The plaintiff alleged that the MCB's client neurosurgeon defendants failed to perform a vascular examination, including assessing pulses, which allegedly resulted in a 36-hour delay in performing an embolectomy and ultimately required fasciotomies.

At trial, MCB presented expert testimony from both vascular and neurosurgical specialists, who opined that the initial diagnosis was appropriate based on the patient's presentation and that a vascular injury only became apparent the following day when the patient's symptoms changed. The defense further argued that the need for a fasciotomy developed early in the course of the condition and that the alleged delay did not cause harm. The jury returned a defense verdict in favor of the neurosurgeon defendants.

Summary Judgment Case Alleging Improper Dental Implant Placement

Charles S. Schechter

Victor M. Ivanoff

Keleisha A. Milton

Senior Trial Partner **Charles S. Schechter**, Partner **Victor M. Ivanoff** and Associate **Keleisha A. Milton** successfully obtained summary judgment, in Queens County Supreme Court, in a case involving a 40-year-old male plaintiff who alleged that MCB's client, a dentist, was negligent in the placement of dental restorations by utilizing improperly sized cantilevers. The plaintiff further alleged that MCB's client failed to obtain appropriate diagnostic imaging, including x-rays, and failed to refer the plaintiff to an appropriate specialist. It was claimed that these alleged departures contributed to the plaintiff's implant failure, and the need for removal and replacement procedures.

A motion for summary judgment was filed on behalf of the dentist, supported by an expert affirmation attesting to the adequacy and propriety of the care provided by MCB's client before and after the patient's implant procedure, as well as the client's placement of the dental restorations.

In support of the motion, MCB demonstrated that the dental restorations were of adequate construction, with appropriately sized cantilevers. MCB demonstrated that its client complied with the standard of care by considering all relevant factors for dental restoration placement, such as the anterior-posterior spread (the distance between the anterior and posterior implants) as a guide to determine cantilever length, ensuring that the cantilevers evenly lined up at the back of the mouth to achieve an even bite and full smile, and for the occlusion, or the pressure created by the patient's bite, to be focused on the implants rather than the cantilevers. MCB further established that the claimed implant failure was entirely attributable to the plaintiff's poor pre-existing periodontal condition, as well as his noncompliance with post-operative instructions, including significant delays in follow-up visits.

Plaintiff's counsel opposed the motion, and filed their own motion for summary judgment, arguing that MCB's client was negligent in causing the implants to fail. The Court found the plaintiff's expert opinions to be vague, speculative, and conclusory, and therefore insufficient to rebut the defendant's prima facie showing of entitlement to summary judgment. Accordingly, MCB's motion was granted in full, and plaintiff's motion denied.

John M. Bugliosi

Adam T. Brown

Kristen E. Griffin

Summary Judgment Secured in *Clostridioides Difficile* Treatment Case

Partners **John M. Bugliosi** and **Adam T. Brown**, and Senior Associate **Kristen E. Griffin** successfully obtained summary judgment in a case alleging negligent treatment of plaintiff's *Clostridioides difficile (C. diff)* infection, in Rockland County Supreme Court. The matter involved the plaintiff's admission to a codefendant hospital with a diagnosis of *C.difficile* colitis. During this lengthy admission until his death, plaintiff received treatment from MCB's client infectious disease physician, along with physicians from numerous other medical specialties.

»

Case Results

CONTINUED FROM PREVIOUS PAGE

MCB moved for summary judgment, supported by an expert affirmation from a physician board certified in infectious disease, establishing that the care and treatment rendered by MCB's client was at all times within good and accepted standards of medical practice and that physician plaintiff was appropriately treated from an infectious disease perspective. Specifically, MCB demonstrated that the *C. difficile* infection was appropriately treated and ultimately resolved, as reflected in the autopsy report. MCB further established that, as an infectious disease consultant, MCB's client provided consultative care alongside multiple treating specialties, including surgery, gastroenterology, cardiology, pulmonology, nephrology, and hematology.

The Court granted MCB's motion, finding that MCB established through expert affirmation, medical records, and the autopsy that its infectious disease physician properly managed the plaintiff's care in accordance with the accepted standard of care and that *C. difficile* was not the proximate cause of death. The Court further held that plaintiff's opposition was conclusory and speculative and failed to raise a triable issue of fact. The Court dismissed the complaint against MCB's client in its entirety. ■

— FORTH ANNUAL —

SUITED *for* SUCCESS

Law students shopping donated professional clothing and accessories.

MCB's Suited for Success event committee and volunteers.

MCB's 4th Annual "Suited for Success" event was held at the Nassau County Bar Association on April 18, 2026. It was a pleasure connecting with students from law schools across New York, and our Partners especially valued the opportunity to conduct mock interviews and share their insights. We're proud to host this event each year to help students build a professional wardrobe and feel more confident as they prepare for interviews.

We are especially grateful to all who volunteered their time and donated items to make this such a successful event. Special thanks goes to our Gold Sponsors, Tom James and Jaspan Schlesinger LLP, and our Silver Sponsor, Happy and Healthy Pediatrics. ■

Thank You Sponsors!

— GOLD —

Jaspan Schlesinger Narendran LLP — Attorneys at Law

Tom James — Since 1966

— SILVER —

Happy & Healthy Pediatrics — Pediatric, Adolescent, & Breastfeeding Medicine

What's New at MCB?

Achievements

Nicole S. Barresi

MCB PARTNER RATED AV PREEMINENT BY MARTINDALE-HUBBELL®

Congratulations to Nicole S. Barresi for achieving an AV Preeminent rating* from Martindale Hubbell®, their highest rating for professional excellence, legal knowledge, communication skills and ethical standards, a distinction earned through a rigorous peer review of the legal community.

Martindale-Hubbell® AV PREEMINENT® Peer Rated for Highest Level of Professional Excellence 2026

*AV®, AV Preeminent®, Martindale-Hubbell Distinguished℠ and Martindale-Hubbell Notable℠ are Certification Marks used under license in accordance with the Martindale-Hubbell® certification procedures, standards and policies.

New Attorneys

MCB WELCOMES THREE NEW ATTORNEYS

MCB extended a warm welcome to the latest new attorneys to join the Firm. Each talented individual brings unique strengths and skills, enhancing our capabilities and service to our clients.

Johanna R. Aguilera

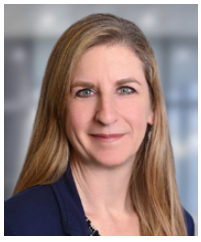
Julianna Baron

Christopher Belalcazar

A Fond Farewell

Please join us in celebrating the remarkable 44-year career of Senior Trial Partner William P. Brady as he enters into retirement. We are deeply grateful for his decades of leadership, distinguished service, and the high standard of excellence he set for the Firm.

Presentation



Jacqueline D. Berger

SENIOR TRIAL PARTNER JACQUELINE D. BERGER PRESENTS AT FORDHAM UNIVERSITY SCHOOL OF LAW

FORDHAM UNIVERSITY

MCB is proud to share that Jacqueline Berger was invited back to present at the Litigation Practicum Class at Fordham University School of Law. Jacqueline spoke on ***Depositions in Medical Malpractice Cases***, discussing strategies and insight for deposing plaintiffs and defending physicians, and sharing practical insight from her litigation experience.

Events & Sponsorships

MCB is honored to support a wide range of charitable initiatives, with a special focus on the causes championed by our health care clients. We furthermore remain actively engaged in the legal community by attending and sponsoring functions that are vital to the advancement of our profession.

Associates Elizabeth Athy and Johanna Aguilera, along with Marketing Manager KatieLynn R. Mulligan and Marketing Coordinator Laura Villalba, MBA, represented MCB at the event.

FORDHAM FIRM RECEPTION AND NETWORKING EVENT

In February, MCB hosted a table at the Fordham Law Small and Midsize Firm Reception and Networking Event. Our representatives engaged with over 200 students exploring the diverse career paths a law degree offers. Participation in events like these is central to MCB's commitment to supporting future lawyers as they navigate their professional development.

NEW YORK LAW SCHOOL FIRM RECEPTION

Associates Shannon Stewart and McKenzie Nelson represented MCB at the recent New York Law School Firm Reception. This networking event serves as a bridge between leading private sector employers and practice-ready students. MCB was proud to engage with these emerging legal professionals, sharing insights into our Firm's culture and the specialized world of medical malpractice defense and healthcare law.

Shannon L. Stewart

McKenzie L. Nelson

NEW YORK LAW SCHOOL

AHRMNY HALF-DAY CONFERENCE

Karen Corbett, Elizabeth Sandonato, and Anina Monte attended AHRMNY's half-day conference on Long Island. In recognition of Patient Safety Awareness, the conference brought together healthcare risk management professionals for collaborative, practical discussions focused on creating a safer environment for both patients and providers.

Karen B. Corbett

Elizabeth J. Sandonato

Anina H. Monte

MCB
MARTIN CLEARWATER & BELL LLP

NEW YORK, NY
220 East 42nd Street
New York, NY 10017
PHONE (212) 697-3122
FAX (212) 949-7054

EAST MEADOW, NY
90 Merrick Avenue
Suite 401
East Meadow, NY 11554
PHONE (516) 222-8500
FAX (516) 222-8513

WHITE PLAINS, NY
245 Main Street
Suite 501
White Plains, NY 10601
PHONE (914) 328-2969
FAX (914) 328-4056

ROSELAND, NJ
101 Eisenhower Parkway
Suite 300, Room 305
Roseland, NJ 07068
PHONE (973) 735-0578
FAX (973) 735-0584

ROCHESTER,NY
16 West Main Street
Suite 728
Rochester, NY 14614
PHONE (585) 413-1699
FAX (585) 413-3430

NORWALK, CT
200 Connecticut Avenue
Suite 305
Norwalk, CT 06854
PHONE (203) 738-5226
FAX (203) 738-5227

STAY UP TO DATE WITH MCB

Visit our website for the latest updates and news at: mcblaw.com

Defense Practice Update is a publication of Martin Clearwater & Bell LLP.