

# 25-26

YEAR IN REVIEW

**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) experienced another productive and successful year in 2025–2026, highlighted by continued litigation success, strategic growth, and an ongoing focus on delivering exceptional client service. Increased trial activity and strong collaboration across practice groups have positioned the firm for continued success in an evolving legal landscape.

Throughout the year, our attorneys secured favorable results in a wide range of matters, including defense verdicts, summary judgment victories, appellate decisions, dismissals, and negotiated resolutions. These outcomes reflect the firm's commitment to practical, efficient representation tailored to each client's needs and objectives.

A major focus this year has been the continued expansion of our legal team. The addition of talented attorneys and experienced partners has further strengthened the depth of our practice areas and enhanced our ability to handle increasingly sophisticated and high-exposure matters.

The firm also continued to prioritize professional growth and client engagement through internal training initiatives, mentorship opportunities, and educational programming. We expanded our CLE offerings and hosted a variety of seminars addressing emerging legal developments, with a particular emphasis on medical malpractice defense and litigation strategy.

In addition to our legal work, MCB remained committed to fostering a strong and collaborative firm culture. Through team-building initiatives, professional development programs, and firmwide events, we continued to support an environment that encourages teamwork, communication, and excellence at every level.

Overall, 2025–2026 has been a year defined by momentum, achievement, and continued advancement. As we look ahead, MCB remains dedicated to providing outstanding legal representation, strengthening client relationships, and building on the firm's longstanding reputation throughout the Tri-State area.

# 114

YEARS IN BUSINESS

# 6

TRI-STATE LOCATIONS

# 40+

HOSPITALS AND ACADEMIC  
MEDICAL CENTERS REPRESENTED

# 100+

NURSING HOMES  
REPRESENTED

# 25+

INSURANCE CARRIERS  
REPRESENTED

# 75+

ATTORNEYS

MCB WAS NAMED IN THE 2025 EDITION OF BEST LAW FIRMS® AS A TIER 1 NATIONAL FIRM IN HEALTH CARE LAW. IN THE SAME EDITION, THE FIRM WAS NAMED AS A TIER 1 NEW YORK CITY FIRM IN THREE PRACTICE AREAS: HEALTH CARE LAW, MEDICAL MALPRACTICE LAW, AND PERSONAL INJURY LITIGATION (DEFENDANTS).

MEDICAL MALPRACTICE:

## DEFENSE VERDICTS

## Defense Verdict Secured in Post-Hysterectomy Bowel Injury Case



SENIOR TRIAL PARTNER MICHAEL A. SONKIN, PARTNER CASEY M. HUGHES, AND ASSOCIATE KELEISHA A. MILTON

*Nassau County Supreme Court*

**Allegation:** A laparoscopically assisted vaginal hysterectomy resulted in a bowel perforation, abscess, and rectovaginal fistula.

This matter arose from a 2014 laparoscopically assisted vaginal hysterectomy performed by MCB's clients, along with a prolapse repair performed by a co-defendant, which the plaintiff alleged caused a bowel perforation. The co-defendant set-

tled out just before trial, and MCB argued on behalf of our clients that no perforation occurred during either procedure, highlighting that the patient was afebrile and reported no unusual abdominal pain in the immediate postoperative period. After returning to the hospital thereafter with a fever, a CT scan revealed an abscess consistent with an infection. MCB argued that the abscess was not due to perforation, as the patient's fever, elevat-

ed white blood cell count, and pain all improved following IR drainage. Although a rectovaginal fistula ultimately developed 10 days postoperatively, MCB maintained that this was not caused by the perforation but by an infection leading to breakdown of the bowel wall in an area of a prior surgery. The case was tried over a two-week period, with the jury returning a unanimous defense verdict in less than one hour.

## Defense Verdict Secured in Angioplasty and Pseudoaneurysm Case



SENIOR TRIAL PARTNER ROSALEEN T. MCCRORY, PARTNER ELIZABETH J. SANDONATO, AND ASSOCIATE EDMUND T. RAKOWSKI

*Queens County Supreme Court*

**Allegation:** Failure to timely diagnose and treat a right femoral artery pseudoaneurysm and failure to admit the patient to the hospital resulted in two amputations.

This case arose from a 2021 left superficial femoral and posterior tibial arterial angioplasty. The plaintiff underwent a left lower extremity angiogram with balloon angioplasty of the superficial femoral artery, with access obtained through the right common femoral artery under ultrasound guidance. Two days later, the plaintiff returned reporting recurrence of rest pain.

The following day, the plaintiff underwent a repeat left lower extremity angiogram, during which an attempt was made to gain access through the right femoral

artery. Upon ultrasound-guided assessment, a stable pseudoaneurysm was identified. The angiogram was then performed through the left common femoral artery, during which dissections of the superficial femoral artery were managed with angioplasty and stenting.

After closure of the groin access site, while still in the procedure room, the plaintiff became hypotensive and complained of leg and abdominal pain. It was determined that there was active extravasation from the right common femoral artery at the site of the pseudoaneurysm. The plaintiff developed clots occluding the right lower extremity arteries and, after transfer to the hospital and performance of thrombectomy, ultimately underwent a right below-the-knee amputation and transmetatarsal amputation of the left foot.

Plaintiff alleged a failure to diagnose and treat the pseudoaneurysm and a failure to admit him to the hospital, claiming the amputations would have been avoided in a hospital setting. MCB established that the pseudoaneurysm was not diagnosable until identified during the second angiogram, was stable, and did not require performance of the immediate treatment. MCB further established that performing the procedures in a hospital setting would not have changed the outcome. Plaintiff's expert conceded that referral to interventional radiology and outpatient treatment were appropriate. Prior to trial, plaintiff made a \$12 million settlement demand. The jury ultimately after returned a defense verdict in favor of MCB's client.

## Defense Verdict in Case Involving Foot Drop Diagnosis Alleged Missed Vascular Diagnosis



SENIOR TRIAL PARTNER JEFF LAWTON

*Nassau County Supreme Court*

**Allegation:** Failure to perform a vascular examination following a foot drop diagnosis resulted in a delay in treatment and the need for surgery.

This case involved 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 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.

## Defense Verdict Secured in Hospital Negligence Case



SENIOR TRIAL PARTNER DANIEL L. FREIDLIN, PARTNER ANINA H. MONTE, AND SENIOR ASSOCIATE TIMOTHY M. O'TOOLE

*Nassau County Supreme Court*

**Allegation:** Negligent application of excessive force during an echocardiogram caused sternal wire fractures.

In this case, the plaintiff alleged that MCB's hospital client and its employed echocardiogram technologist negligently applied excessive force to the sternum during the performance of an echocardiogram, resulting in the fracture of sternal wires placed at the conclusion of his aortic valve replacement three years earlier.

Prior to trial, MCB filed a motion for a *Frye* hearing. While the Court ultimately denied the request, the motion was successful in that the plaintiff submitted an affirmation from their trial expert to op-

pose our motion. At trial, the plaintiff testified that the echocardiogram technologist applied undue pressure across his sternum and ribs, causing pain during the procedure. The plaintiff was diagnosed with a sternal wire fracture within several weeks of the echocardiogram with apparently no other intervening traumatic event.

The echocardiogram technologist testified at trial that he could not recall performing this specific test on the plaintiff, but using invariable practice, as to his testimony, established the performance of the examination was performed while seated, and using his non-dominant hand. He further explained that while the test may cause discomfort for some patients,

no patient has ever complained to him of pain. We cross-examined the plaintiff's expert with his sworn affirmation and established that an echocardiogram has never been found to have ever caused sternal wire fractures. MCB also demonstrated evidence of sternal wire fracture on imaging two years earlier than the performance of this echocardiogram.

In summation, MCB argued that returning a plaintiff verdict would require the jury to conclude that the plaintiff was the first person in world history where this has ever occurred and to ignore the findings of the prior imaging. The jury returned a unanimous defense verdict in well under an hour.

## Defense Verdict in Ischemic Optic Neuropathy Case



SENIOR TRIAL PARTNER JACQUELINE D. BERGER

*Queens County Supreme Court*

**Allegation:** A negligent ophthalmology consultation and delayed diagnosis of ischemic optic neuropathy resulted in complete blindness.

This case involved a then 54-year 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, and later perform a full examination in the clinic, or conduct a one-time evaluation in the clinic as soon as it opened 4 hours later. The plaintiff chose to go home and return to the clinic later that morning. She was discharged from the ER visually and hemodynamically stable.

At the ophthalmology clinic, a full work-up ensued for 3 hours, and the diagnosis remained unclear. Toward the end of the visit, the plaintiff fainted, 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 she was unstable and that her hemoglobin and/or blood pressure may have dropped since the ER. 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 plaintiff 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 plaintiff'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 patient was stable to go to the ophthalmology 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 plaintiff 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.

## Defense Verdict Secured in Podiatry Case Involving Toe Amputation



SENIOR TRIAL PARTNER CHRISTOPHER A. TERZIAN

*Westchester County Supreme Court*

**Allegation:** Improper podiatric care during a toenail trimming caused an infection and toe amputation.

In this matter, a then 54-year-old female plaintiff presented for trimming of an incurved, fungal right great toenail. The plaintiff was diabetic, smoked, and had a history of hypertension. The plaintiff alleged that the doctor's purported improper care caused a skin wound that allowed bacteria to seed into the tissues, leading to a right great toe infection and the eventual amputation of the toe more than five months later. The plaintiff then experienced a lengthy recovery, includ-

ing a several-month long admission to a rehabilitation center, along with subsequent wound and bone infections.

Mr. Terzian, with his expert podiatrist and expert vascular surgeon respective testimony, demonstrated that the plaintiff's right great toe infection and subsequent amputation were caused by a lack of blood flow to the toe, which was diagnosed within two weeks of the plaintiff's visit to the defendant podiatrist. The proof also showed that there was a mistaken diagnosis of a wound infection arising after the defendant's care. Mr. Terzian and his experts explained and persuaded the jury that, once sufficient

blood flow through the dorsalis pedis artery to the toe was compromised, the tissue became necrotic and subsequently served as a nidus for infection. The experts further testified how the plaintiff's uncontrolled diabetes and history of smoking contributed to her vascularly compromised condition, thereby hampering all reasonable efforts to revascularize her right great toe.

Plaintiff's counsel asked the jury to award \$500,000 for his client's past pain and suffering, and \$500,000 for her alleged future pain and suffering for the rest of her life.

## Defense Verdict in Case Alleging Failure to Diagnose Arterial Occlusion



PARTNER MICHAEL J. BORANIAN, OF COUNSEL KENYA S. HARGROVE, AND SENIOR ASSOCIATE IGOR M. MURTA

*Nassau County Supreme Court*

**Allegation:** Failures to diagnose a right-sided arterial occlusion led to total loss of blood flow, necessitating surgery that caused compartment syndrome and permanent foot drop.

This case involved a then 55-year-old retired laborer who alleged that MCB's client hospital, its vascular surgeon and staff, as well as codefendant emergency department physicians, failed on multiple occasions to diagnose a right-sided arterial occlusion, leading to the development of thrombus and complete occlusion of blood flow to the lower extremity. Plaintiff claimed that the alleged delay allowed the occlusion to progress,

ultimately necessitating an endarterectomy and reperfusion surgery, which in turn allegedly caused compartment syndrome, the need for fasciotomy, permanent foot drop, and related sequelae.

MCB maintained that the Emergency Department (ED) treatment rendered was appropriate, that the plaintiff never presented in an emergent state, that the indicated diagnostic studies were properly performed, and that referral to the patient's primary care physician following each emergency encounter was appropriate. MCB further established that a later change in circumstances occurred which impacted the plaintiff's vasculature and ultimately necessitated surgical

intervention. It was further demonstrated that surgery was not indicated until the plaintiff's final presentation to MCB's client hospital, during which the plaintiff requested transfer to another facility, thereby further delaying the required surgery by an additional two days.

At trial, MCB established that the applicable emergency medicine and vascular surgery standards of care were met and that the plaintiff's foot drop had not occurred prior to transfer from MCB's client hospital. Following an eight-day trial, the jury deliberated for less than one hour during its lunch break before returning a unanimous defense verdict.

## Defense Verdict Obtained in Lumbar Microdiscectomy Case



SENIOR TRIAL PARTNER MICHAEL A. SONKIN, PARTNER AMY E. KORN, AND SENIOR ASSOCIATE LAUREN BISOGNO

*New York County Supreme Court*

**Allegation:** A negligently recommended L4/5 microdiscectomy caused permanent chronic pain syndrome and loss of earnings.

This matter involved 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.

## Defense Verdict Secured in Breast Radiology Malpractice Case



SENIOR TRIAL PARTNER DANIEL L. FREIDLIN, PARTNER CASEY M. HUGHES, AND ASSOCIATE KELEISHA A. MILTON

*Nassau County Supreme Court*

**Allegation:** A failure to diagnose breast cancer on a breast ultrasound resulted in the progression of cancer to Stage IIIB.

This case involved 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 macrolobu-

lated (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 patients with MBWCHN, provided 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 cancer was staged as IIIB triple-negative breast cancer. MCB argued that this was a different anatomic location, that the PRIOR nodule had resolved, and that this was a new interval cancer that developed AFTER prior screening exam. MCB further demonstrated that triple-negative breast cancer is extremely fast-growing, making it impossible for the earlier .9 x .5 x .4 cm nodule to have been the same lesion as the later 1.8 x 1.4 x 1.4 cm cancer.

After more than one day of deliberations, the jury returned a defense verdict.

## Defense Verdict for Cardiologist in Case Alleging Failure to Address Pericardial Effusion



SENIOR TRIAL PARTNER MICHAEL A. SONKIN, PARTNER DEBORAH A. DYCKMAN, AND SENIOR ASSOCIATE BRIAN M. FRANKOSKI

*Kings County Supreme Court*

**Allegation:** A failure to appreciate a pericardial effusion and admit the patient resulted in a fatal cardiac tamponade.

In this matter, the plaintiff, on behalf of the decedent, alleged that MCB's client, a cardiologist, failed to appreciate the significance of a moderate pericardial effusion in a patient who had undergone coronary artery bypass surgery two weeks earlier for myocardial infarction and diffuse coronary artery disease. The plaintiff further alleged that the patient presented at a post-operative clinic visit with severe shortness of breath due to a slow bleed into the pericardium. It was claimed that the pericardial effusion in a patient with severe shortness of breath required immediate hospital admission

and close monitoring to avoid progression to tamponade.

MCB maintained that the patient did not have severe shortness of breath given his normal heart rate and respiratory rate, lack of documented complaints, failure to present to an ER in the interim period of time, and normal cardiac function on echocardiogram despite the identified effusion. The defense further argued that this information demonstrated that the patient was not actively bleeding as of that post-operative visit and that admission was not warranted for a moderate pericardial effusion that was not impacting heart function. The patient was instructed to keep a previously scheduled appointment with his surgeon for two days later; however, he failed to appear for that appointment and died two days

there after. Hospital records suggested the occurrence of a tamponade.

The plaintiff contended that the autopsy demonstrated that the patient died from progressive bleeding into the pericardium causing tamponade given the substantial amount of blood and clots found in the pericardium and chest. The defense denied the decedent died from a tamponade and instead maintained that the patient instead suffered from a repeat myocardial infarction given post mortem coronary artery occlusions found, with the presence of blood on autopsy attributable to a detached bypass graft following extensive CPR performed as part of the resuscitative effort. Following the lengthy trial, the jury deliberated for only one hour before returning their unanimous verdict for the defense.

## Unanimous Defense Verdict in High-Stakes Delayed Diagnosis Case



SENIOR TRIAL PARTNER CHRISTOPHER A. TERZIAN

*Westchester County Supreme Court*

**Allegation:** A delayed diagnosis of an abdominal wall desmoid tumor resulted in the loss of opportunity for surgical removal.

In this case, the plaintiffs alleged the defendant doctor departed from good and accepted gynecologic practice, leading to a delayed diagnosis of a non-malignant abdominal wall desmoid tumor. The plaintiffs asked the jury to award \$1 million for past pain and suffering to the plaintiff wife, an unspecified amount for her future damages, and \$400,000 for the plaintiff husband's alleged loss of services.

The plaintiff wife delivered twins via C-section performed by the defendant doctor. Approximately 13 months lat-

er, she allegedly reported feeling a mass near the C-section scar during her annual gynecologic visit. The doctor had no recollection of the complaint, and his records contained no documentation of it. He examined the scar and abdomen and found no abnormalities.

Five months later, plaintiff presented to a primary care physician with complaints near the scar site, leading to imaging and diagnosis of an abdominal wall desmoid tumor. Memorial Sloan Kettering physicians advised against surgery due to the complexity and high risk of recurrence, and plaintiff instead underwent targeted medical therapy. After approximately three years of treatment, the tumor lost its cellularity and no further treatment was required. Plaintiff alleged that the

delayed diagnosis deprived her of the opportunity for surgical removal and subjected her to treatment side effects.

Through expert gynecologic, surgical oncology, and oncology testimony, Mr. Terzian established that the defendant's care was within accepted gynecologic standards and that medical therapy, rather than surgery, was the appropriate treatment due to the benign nature and location of the tumor. Mr. Terzian further demonstrated that surgery would have resulted in significant disfigurement and abdominal weakness.

After 43 minutes of deliberation, the jury returned a unanimous defense verdict. ■

## LEGISLATIVE ALERT

### AVOID Act Amends CPLR § 1007



BY: PARTNER AND HEAD OF THE APPELLATE PRACTICE GROUP BARBARA D. GOLDBERG, APPELLATE PARTNER RICHARD WOLF, AND ASSOCIATE ANDREW J. FISHER

Effective April 18, 2026, the rule governing third-party practice in New York, CPLR § 1007, has been amended to limit the time within which a defendant may implead a nonparty. These amendments are the result of the Avoiding Vexatious Overuse of Impleading to Delay ("AVOID") Act and a subsequent law passed in February 2026.

The now-effective CPLR § 1007 provides that a defendant must commence a third-party action within 90 days after service of its Answer, unless the Court orders otherwise. *See* CPLR § 1007(b). The defendant-third-party plaintiff must serve the third-party summons and complaint on the plaintiff's attorney and third-party defendant within 20 days of filing. *See* CPLR § 1007(a). A third-party

action now cannot be commenced after the filing of the Note of Issue unless upon good cause shown or in the interest of justice. *See* CPLR § 1007(c).

Notwithstanding these limitations, a defendant or third-party defendant may file a third-party summons and complaint against an employer of the plaintiff without needing an Order of the Court permitting same within 90 days after the later of: (i) when the defendant or third-party defendant learns the identity of the plaintiff's employer; or (ii) when the defendant or third-party defendant knows or should have known that the plaintiff sustained a grave injury for purposes of the Workers' Compensation Law. *See* CPLR § 1007(e). Any third-party action filed in violation of the statute must be either severed or

dismissed without prejudice. *See* CPLR § 1007(d). In addition, if a third-party action is severed from the main action, and the third-party plaintiff commences a new action against a severed third-party defendant, any motion to consolidate such actions shall not be permitted. *See* CPLR § 1007(f).

Practitioners should take care to review the newly-revised CPLR § 1007 to familiarize themselves with the new rules governing impleaders. While it is too soon for these new amendments to have been litigated, we will continue to monitor for new developments and issue future alerts if and when the Courts begin to interpret CPLR § 1007. ■

MEDICAL MALPRACTICE:

## SUMMARY JUDGMENTS

## Summary Judgment Secured in Bladder Surgery and Ureter Injury Case



SENIOR TRIAL PARTNERS ROSALEEN T. MCCRORY AND DANIEL L. FREIDLIN, OF COUNSEL ROBERT J. BETZ, AND SENIOR ASSOCIATE DANIEL P. BORBET

*Queens County Supreme Court*

**Allegation:** Negligence during a bladder herniation repair resulted in a transected ureter and ongoing pain.

This case involved surgery performed by urologists at MCB's client hospital to repair a bladder herniation (cystocele) and place a mesh sling for ongoing incontinence. During the surgery, the right ureter was transected, and one of MCB's clients, a urologist, was consulted intraoperatively to perform a right ureter re-implantation, which was completed. The intended sling procedure could not be completed at that time. Plaintiff alleged negligence in the original operation and the subsequent ureter repair, claiming ongoing incontinence, abdominal pain, and right leg pain and weakness.

The Honorable Tracy Catapano-Fox issued a detailed Decision & Order finding that defendants established a prima

facie entitlement to summary judgment. Based on documentary evidence and expert affirmations from urogynecology and urology physicians, the Court held that defendants did not depart from accepted standards of care and did not proximately cause plaintiff's alleged injuries.

The Court found that the surgery was indicated, informed consent was obtained for both the procedure and intraoperative laparotomy, and that ureter injury is a known risk of the procedure. The Court further found that MCB's client urologists appropriately obtained an intraoperative consultation and that the ureter repair was timely performed. The Court also held that the operating physician acted within the standard of care by postponing the sling portion of the procedure to avoid further complications, which explained plaintiff's continued incon-

tinence until the sling was successfully placed at a later date.

In opposition, the Court found plaintiff failed to raise a triable issue of fact. The Court determined that plaintiff's expert opinions were vague, conclusory, unsupported by the record, and failed to account for the plaintiff's anomalous anatomy and the known risk of ureter injury. The Court also rejected allegations regarding Foley catheter placement and bladder positioning because they were not alleged in the Bill of Particulars.

The Court further held that plaintiff failed to raise a triable issue regarding the repairing urologist, informed consent, negligent hiring and supervision, or liability against MCB's client hospital. The case was dismissed in its entirety against both MCB client physicians and the hospital.

## Summary Judgment in Case Alleging Birth-Related Clavicle Fracture



SENIOR TRIAL PARTNERS THOMAS A. MOBILIA AND CHRISTOPHER A. TERZIAN

*Bronx County Supreme Court*

**Allegation:** Excessive force used during a vaginal delivery resulted in a non-displaced fractured right clavicle.

This case involved the alleged negligent delivery of an infant who experienced a non-displaced fractured right clavicle at birth. Plaintiffs' counsel claimed excessive force was used by MCB's client in delivering the infant plaintiff. The infant's right clavicular fracture healed normal-

ly, and his right upper extremity was successfully treated with physical therapy.

MCB's expert obstetrician submitted an Affirmation in support of the motion, opining that a fractured clavicle is a known risk of a normal vaginal delivery, and that the delivery record revealed MCB's obstetrical client did not encounter any difficulties during the delivery of the infant. The expert further opined that the vaginal delivery performed by MCB's

client obstetrician was within good and accepted practice, and that there were no signs or symptoms prior to delivery that the infant's clavicle was at risk for fracture during a vaginal delivery.

Plaintiffs' expert opposed, arguing that the lack of any evidence of shoulder dystocia did not exclude the possibility that the clavicle was fractured during delivery due to excessive force and traction applied to the infant's right shoulder by

MCB's client. The codefendant nurse and codefendant hospital also moved for summary judgment and were successful.

MCB's reply to plaintiffs' opposition pointed out that the plaintiffs' expert failed to raise any material, triable is-

sue of fact, and that therefore summary judgment should be granted as a matter of law. We pointed out that each theory of negligence alleged by plaintiffs was not supported by the facts of the case. The fetal heart rate was normal at all times,

there was no indication to perform a cesarean section delivery, the infant plaintiff was not a large baby, and there were no difficulties encountered by MCB's obstetrical client during his vaginal delivery of the baby.

## Court Dismisses Claims Against Physician in Fatal Assisted Living Fall Action



SENIOR TRIAL PARTNER MICHAEL A. SONKIN, PARTNER AMY E. KORN, AND ASSOCIATE ELIZABETH C. ATHY

*Kings County Supreme Court*

**Allegation:** Negligence in the management of a resident's fall risk resulted in an unwitnessed fall leading to catastrophic injuries and death.

This medical malpractice action arose from a fatal, unwitnessed fall sustained by a resident at an assisted living facility. The plaintiff alleged that the physician failed to adequately assess and manage the resident's fall risk, failed to ensure implementation of fall-prevention measures, failed to follow up on recommendations for increased supervision, failed to secure physical therapy services, and failed to recommend transfer to a higher level of care. Plaintiff claimed alleged departures led to an unwitnessed fall that resulted in catastrophic injuries

In moving for summary judgment, MCB established that the physician's role was limited to evaluating the resident when

requested and communicating medical findings and recommendations to facility staff. MCB demonstrated that the physician was not employed by the assisted living facility, had no authority to direct facility personnel, determine room placement, implement supervision plans, review facility records, or require transfer to another facility. MCB further established that the physician repeatedly recognized the resident's fall risk and appropriately recommended physical therapy, mobility assistance, monitoring for falls, and one-to-one supervision. The motion also argued that plaintiff's statutory and negligence-per-se claims were legally unsupported and unopposed.

In opposition to the motion, plaintiff submitted expert testimony contending that the physician had a duty not only to assess the patient and make recommendations, but also to ensure that the assisted living facility implemented those recommen-

dations, to follow up with facility staff regarding compliance, to recommend alternative interventions if recommendations were not followed, and to facilitate transfer to a skilled nursing facility. Plaintiff's expert also asserted that the physician should have taken additional steps regarding supervision, monitoring, and physical therapy.

The Court rejected plaintiff's arguments and granted summary judgment dismissing all claims against MCB's physician. The Court held that the physician's role was limited to assessing the resident's condition and making appropriate recommendations, not directing or ensuring how the assisted living facility implemented those recommendations. The Court further found that the plaintiff's expert opinions regarding duty and causation were conclusory and speculative were contradicted by the record.

## Summary Judgment Secured in Covid-19 EDTPA Immunity Case



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

*Queens County Supreme Court*

**Allegation:** Failure to provide necessary medical care and nursing services resulted in pressure ulcers and accelerated the decedent's death.

This matter involved a then 79-year-old widowed female with a history of hypertension, carotid stenosis, and a significant smoking history. She presented to MCB's client hospital's Emergency De-

partment on 3/31/2020 with a 3-day history of right-sided weakness and speech difficulty. She was diagnosed with a CVA and admitted to the neurological ICU. She had limited improvement in her aphasia and failed her SLP evaluation. As such, a PEG tube was placed for feeding. Once stabilized, she was discharged on 4/8/20 and, according to the complaint, she died on 9/10/20. Plaintiff alleged that the MCB's client's employed physicians

failed to provide necessary medical care and nursing services (i.e. turning and positioning) resulting in serious injuries including pressure ulcers and causing and/or accelerating the decedent's death.

The Court found that MCB's client hospital and its employed physicians had met their burden of establishing a prima facie case for summary judgment through the expert affirmation of MCB's expert

physician and the affirmation of a wound care nurse, which established that the hospital and its employees did not commit any gross negligence in the care and treatment of the decedent. Furthermore, the care and treatment provided to the decedent between March 31, 2020 and April 8, 2020 was impacted by MCB's client hospital's response to the COVID-19 Outbreak and in response to or support of the New York State's COVID-19 Directives, thereby benefiting from the immunity provisions bestowed by the EDTPA.

In opposition, plaintiff submitted the affirmation of a physician who opined that MCB's client hospital had failed to provide actual proof that the decedent's stay was impacted by the COVID-19 pandem-

ic. The Court found these arguments unavailing, pointing to MCB's expert nurses' affirmation which established that staff were reassigned due to overflow in intensive care units resulting in less time for each staff member to dedicate to each patient's care, which also impacted the provision of wound care.

Plaintiff also argued that the repeal of the EDTPA, as of April 6, 2021, was retroactive and, therefore, no immunity should be afforded to our client hospital. In reply, we cited to the numerous Appellate Court level decisions, including *Hasan v Terrace Acquisitions II LLC d/b/a Fordham Nursing and Rehabilitation Center a/k/a Kings Terrace Nursing Home* (2024 NY Slip Op 00739 [1d Dept. 2024]), which held that

the immunity repeal was not retroactive.

The Court found that MCB's client hospital had met the burden of establishing a prima facie case in relation to the immunity from liability conferred by the EDTPA and found that the gross negligence claim asserted by plaintiff, which if established would have precluded EDTPA immunity, was inadequately pled to survive a motion to dismiss.

Accordingly, summary judgment was granted. In addition, the Court granted MCB's request for dismissal based on plaintiff's failure to state a cause of action.

## Summary Judgment Obtained in Skin Breakdown and Nerve Injury Case



SENIOR TRIAL PARTNERS CHARLES S. SCHECHTER AND JACQUELINE D. BERGER, AND ASSOCIATE GABRIELLA M. VERDONE

*Kings County Supreme Court*

**Allegation:** Inadequate treatment of diabetic ketoacidosis and septic shock resulted in a left wrist drop, radial nerve palsy, and pressure ulcers.

This medical malpractice action involved allegations that MCB's clients, a hospital and pulmonology attending physician, were negligent in their treatment of a patient who presented to the hospital with diabetic ketoacidosis, septic shock, and persistent lung infections. The plaintiff claimed that the alleged inadequate treatment over the course of a two-month admission caused him to suffer a left wrist drop, radial nerve palsy, and pressure ulcers.

A motion for summary judgment was filed, supported by two expert affirmations. Specifically, MCB argued that appropriate positioning and skin-care measures were implemented, as shown in the hospital record. The plaintiff opposed the motion utilizing two expert affirmations, alleging that defendants did not implement the required treatment for skin integrity and proper positioning during the plaintiff's hospital admission, resulting in skin breakdown and radial nerve palsy/wrist drop, and further alleging that, had proper care been implemented, the plaintiff would not have suffered those injuries. In reply, MCB argued that it was improper to use hindsight reasoning and that a bad result does not indicate that

medical malpractice occurred. MCB further argued that plaintiff failed to defeat our prima facie entitlement to summary judgment by failing to identify any departures causing the plaintiff's injuries, and that the plaintiff had ignored documentation in the hospital chart indicating all appropriate measures were implemented in an attempt to prevent skin breakdown and any nerve injury.

After oral argument, the Court agreed that plaintiff's expert opinions were insufficient to refute defendants' prima facie showing of entitlement to summary judgment. Accordingly, the action was dismissed and the motion for summary judgment was granted in its entirety.

## Summary Judgment Secured in Alleged ICU Malpractice Case Under COVID-19 Immunity Statute



SENIOR TRIAL PARTNER JOHN J. BARBERA, PARTNER MICHAEL B. MANNING, AND SENIOR ASSOCIATE KRISTEN E. GRIFFEN

*Westchester County Supreme Court*

**Allegation:** Medical malpractice regarding the treatment of lower ex-

**trinity ischemia resulted in rethrombosis and an above-the-knee amputation.**

This matter involved the plaintiff-decedent, who presented to a codefendant hospital's Emergency Department (ED)

with right lower extremity ischemia and underwent multiple vascular procedures, including angiograms, angioplasty with stent placement, and thrombolysis. MCB's client physician treated the decedent in the ICU during the admission. Plaintiff alleged that MCB's client's malpractice caused re-thrombosis, arterial occlusion, limb ischemia, hypotensive events, and the need for a right above-the-knee amputation.

In support of its motion for summary judgment and COVID-19 immunity under the EDTPA, MCB argued that the care rendered adhered to good and accepted medical practice and did not proximately

cause the decedent's injuries. MCB supported the motion with expert affirmations from a physician board certified in critical care medicine, pulmonary medicine, and internal medicine, as well as affirmations from MCB's client physician and the codefendant hospital's Vice President of Medical Affairs and Chief Medical Officer.

The Court granted MCB's motion and dismissed the action in its entirety, finding that defendants established entitlement to immunity under the EDTPA by demonstrating that the care was rendered in good faith pursuant to COVID-19 emergency directives and that the decedent's

treatment was impacted by the hospital's response to the pandemic.

Plaintiff subsequently moved to reargue and renew, relying on *Holder v. Jacob* and additional Second Department decisions. MCB opposed, arguing that plaintiff repeated arguments previously raised and failed to identify any matter of fact or law overlooked by the Court. The Court denied plaintiff's motion, holding that plaintiff failed to demonstrate any basis for reargument or renewal and further determined that the cited appellate decisions did not alter its conclusion that MCB established immunity under the EDTPA.

## Summary Judgment Granted in Alleged Birth Injury Case



SENIOR TRIAL PARTNERS DANIEL L. FREIDLIN AND ARYEH S. KLONSKY

*Nassau County Supreme Court*

**Allegation:** Delay in performing an emergency C-section caused prolonged fetal stress, severe hypoxia, and acidosis, resulting in permanent developmental and speech delays.

This matter involved claims of injuries to the plaintiff mother and infant during a complicated birth, resulting in alleged permanent developmental delays to the child. During the early days of the COVID-19 pandemic, a then 34-year-old female presented to a co-defendant hospital for evaluation of pre-term labor. Examination revealed bleeding concerning for placental abruption, and MCB's obstetrician client admitted the plaintiff for monitoring. During the admission, the plaintiff experienced prolonged fetal decelerations. MCB's obstetrician client consulted with a co-defendant maternal

fetal medicine specialist, who recommended continued monitoring and consideration of delivery if the decelerations recurred. Care was later signed out to MCB's other obstetrician client, who remained available from home.

Later that day, the co-defendant resident physician contacted the on-call obstetrician regarding recurrent decelerations, and based upon the previously established plan, induction with Pitocin and vaginal delivery were recommended. Following epidural placement by the co-defendant anesthesiologist, the plaintiff experienced seizure-like activity. Attempts to resume fetal monitoring showed intermittent tracings concerning for fetal bradycardia. A co-defendant House Safety Officer ultimately performed an emergency Cesarean section, and the child was delivered with poor Apgar scores.

Plaintiffs alleged that delaying the Cesarean section caused prolonged fetal stress, severe hypoxia and acidosis, and developmental and speech delays.

MCB moved for summary judgment supported by a maternal fetal medicine expert who opined that defendants treated plaintiffs in accordance with good and accepted medical practice and that none of the child's injuries were caused by negligence. MCB also argued that defendants were entitled to COVID-19 immunity protections. Plaintiffs opposed their own maternal fetal medicine expert.

The Hon. Judge Randy Sue Marber granted MCB's motion and dismissed the case in its entirety. This excellent result on behalf of MCB's clients avoided the risks of proceeding to trial on this high exposure case.

## Summary Judgment for Surgeon in Robotic Hysterectomy Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO, PARTNER AMY E. KORN, AND SENIOR ASSOCIATE LAUREN BISOGNO

*Kings County Supreme Court*

**Allegation:** Failure to timely diagnose and treat bowel perforations

during a robotic hysterectomy resulted in multiple subsequent surgeries and abdominal wall reconstruction.

This matter involved a then 43-year-old female plaintiff who was admitted to a New York hospital in July 2015 for a ro-

botic hysterectomy performed by a code-fendant physician. Representing both the hospital and a bariatric surgeon, the MCB established that during the procedure, the surgeon was called to perform an intra-operative consultation for a possible enterotomy; however, no signs of bowel injury were identified, and the procedure continued without complication.

Three days post-operatively, a CT scan of the abdomen and pelvis revealed a perforated bowel. The plaintiff was returned to the operating room by MCB's client for an exploratory laparotomy, which revealed two bowel enterotomies, which were repaired by MCB's client. The plaintiff thereafter required additional surgeries,

including washouts and debridements, a small bowel resection, repair of fistulas, and abdominal wall reconstruction.

The plaintiff alleged that MCB's client failed to timely diagnose and treat bowel perforations during the robotic hysterectomy, and that MCB's institutional client was vicariously liable for the intra-operative surgical consultation.

MCB successfully argued on summary judgment that its surgeon properly performed the intraoperative consultation during the early stages of the procedure, and that any expert opinion in opposition that the consulting physician failed to identify the perforations was

speculative as the record was devoid of any evidence that the enterotomies occurred prior to the MCB surgeon's intra-operative consultation, which was performed after trochar placement, but prior to any substantive portions of the hysterectomy. MCB further successfully argued that its institutional client was not vicariously liable for the intra-operatively consulting surgeon, who was not an employee of the hospital.

MCB's motion for summary judgment was granted in full as to the consulting bariatric surgeon and hospital, and thereafter MCB defeated attempts by plaintiff to renew and reargue the motion.

## Summary Judgment Secured in Claims Against Hemodialysis Center



SENIOR TRIAL PARTNER YUKO A. NAKAHARA, PARTNER NICOLE S. BARRESI, AND SENIOR ASSOCIATE ASHLEY M. MULLINGS-MARAGH

*Queens County Supreme Court*

**Allegation:** Negligent post-treatment supervision of a dialysis patient resulted in a fall, injuries, and death.

This case involved allegations that MCB's client, a Hemodialysis Center, was negligent in their post-treatment supervision of a patient by allowing her to suffer a fall and sustain injuries that were claimed to have led to her death.

A motion for summary judgment was filed on behalf of the Dialysis center and

its named staff, supported by an expert affirmation attesting to the adequacy of the care and supervision provided prior to, during, and following the patient's dialysis treatment. The plaintiff's case focused on an allegation that the defendants should not have permitted the decedent to stand unassisted for testing following the completion of dialysis. In support of the motion, the defense argued that this was necessary to ensure that this ambulatory patient was stable for discharge. Plaintiff opposed the mo-

tion and argued that the defendants were negligent in permitting her to stand and ultimately fall.

The Court found the plaintiff's expert's opinions to be grossly vague, speculative, and conclusory, and therefore insufficient to rebut defendants' prima facie showing of entitlement to summary judgment. Accordingly, the action was dismissed and the motion for summary judgment was granted in full.

## Summary Judgment Secured in Failure to Diagnose TMD Case



SENIOR TRIAL PARTNER KAREN B. CORBETT, PARTNER ELIZABETH J. SANDONATO, AND SENIOR ASSOCIATE JOSEPH P. ENNIS

*Nassau County Supreme Court*

**Allegation:** Failure to timely diagnose TMD and an improper wisdom tooth extraction necessitated the replacement of all natural teeth with dental implants.

This matter involved MCB's and a then 57-year-old plaintiff who alleged a failure to timely diagnose and treat temporo-

mandibular joint disorder ("TMD"), as well as the improper extraction of a bottom right rear wisdom tooth. The plaintiff claimed that the alleged malpractice caused her to develop temporomandibular joint disorder (TMD), necessitating the extraction of all of her natural teeth and replacement with a full mouth of dental implants. The plaintiff further claimed that she sustained arthritis in

her left knee and osteopenia in her left hip as a result of the alleged malpractice.

MCB moved for summary judgment, supported by an affirmation from a general dentist. MCB's general dentist expert asserted that the right rear wisdom tooth as hopeless and determined that that extraction was the only appropriate treatment, as the tooth could not be saved. The expert further opined that the plain-

tiff's TMD was attributable to a Class III skeletal deformity that could not have been caused or exacerbated by MCB's client's care. MCB also established that its client promptly referred the plaintiff to a specialist for evaluation and treatment upon presenting with signs of TMD, in accordance with the standard of care.

Plaintiff opposed the motion with an

expert affirmation by periodontist who attested that TMD should have been diagnosed on the first visit with MCB's client and the delay in referring the patient to a specialist exacerbated her condition necessitating a full mouth restoration.

In granting MCB's motion, Justice Sher determined that MCB established prima facie, that MCB's client did not depart

from good and accepted standards of care did not proximately cause or contribute to the plaintiff's injuries. The Court found that plaintiff's expert affirmation was insufficient, as the expert failed to address the standard of care applicable to a general dentist and failed to support claims regarding causation or alleged exacerbation of injuries.

## Appellate Division Reversal of Obstetrical Plaintiff Verdict

APPELLATE PARTNER BARBARA D. GOLDBERG

*Appellate Division, Second Department – Kings County Supreme Court*

**Allegation:** Failure to timely diagnose preterm labor resulted in an infant's premature birth, causing autism spectrum disorder and pervasive developmental delays.

This case involved claims that MCB's obstetrical clients failed to timely diagnose preterm labor, allegedly causing the infant plaintiff to be born prematurely at 25 weeks gestation with a low birth weight. Plaintiffs alleged that the infant's prematurity caused autism spectrum disorder and pervasive developmental delays. Fol-

lowing trial, the jury returned a verdict in favor of plaintiffs and awarded damages, including \$2.25 million for past pain and suffering.

Prior to trial, defense counsel moved to preclude plaintiffs' expert neurologist from offering causation testimony linking prematurity and low birth weight to autism spectrum disorder, arguing that the theory lacked general acceptance within the medical community under Frye standards. The trial court denied the motion and permitted the testimony at trial.

On appeal, the Second Department agreed with MCB's arguments and held

that plaintiffs' expert improperly relied upon observational studies demonstrating only an association, rather than a medically accepted causal relationship, between prematurity and autism. The Court found that plaintiffs failed to establish a sufficient scientific basis for the expert's causation opinions and determined that the trial court erred in permitting the testimony. Accordingly, the Appellate Division reversed the judgment entered against defendants, granted MCB's motion to preclude the challenged causation testimony, and remitted the matter for a new trial.

## Summary Judgment Secured in Pressure Injuries Case

PARTNER KERONA K. SAMUELS

*Bronx County Supreme Court*

**Allegation:** Departure from accepted standards of care in the treatment of bilateral buttock pressure ulcers and violations of nursing home statutes.

This case involved a nursing home alleged to have departed from accepted standards of care in the treatment of the plaintiff's pre-existing bilateral buttock pressure ulcers. The plaintiff also sought punitive damages for alleged violations of

state and federal statutes governing nursing homes.

MCB submitted an expert affirmation establishing that the nursing home met the standard of care in its treatment of the resident and did not violate any applicable statutes. The plaintiff opposed the motion with an expert who opined that the nursing home departed from accepted standards of care in its treatment of the resident's pressure injury, arguing that, given the decedent's compromised

medical history, the facility should have acted above the standard of care to prevent worsening.

In reply, MCB identified errors relied upon by the plaintiff's expert and argued that the expert either misread the medical records or applied an incorrect standard. The Court found that the plaintiff's expert failed to raise a triable issue of fact and granted the motion, dismissing the case against the nursing home in its entirety.

## Summary Judgment Secured in Electronic Fetal Monitoring Case



PARTNERS JOHN M. BUGLIOSI AND ADAM T. BROWN, AND ASSOCIATE EMILY N. GALVEZ

*Ulster County Supreme Court*

**Allegation:** Discontinuation of electronic fetal monitoring resulted in a delayed detection of fetal distress and hypoxic ischemic encephalopathy.

This matter involved an infant plaintiff, by his parents, arising from prenatal care rendered by MCB’s client medical group. The infant was delivered via emergent C-section at 41 weeks and 4/7 days on July 4, 2019, after fetal distress was detected during induction of labor. The infant was diagnosed with hypoxic ischemic encephalopathy and sustained profound developmental delays.

The critical liability issue involved the discontinuation of electronic fetal monitoring overnight, with fetal distress

detected on July 4 when monitoring resumed. The OB/GYN physician, an employee of MCB’s client medical group but not individually represented by MCB, maintained that continuous monitoring overnight had been intended. A co-defendant nurse employed by the hospital testified that the OB/GYN verbally instructed her to discontinue monitoring. MCB secured a stipulation limiting claims against the medical group solely to vicarious liability arising from the OB/GYN’s alleged conduct.

The OB/GYN separately moved for summary judgment, and MCB adopted the arguments of the OB/GYN’s obstetrics and gynecology expert in support of the medical group’s motion. Plaintiffs op-

posed, arguing that the standard of care required the OB/GYN to remain in the hospital overnight. MCB argued in reply that plaintiffs improperly raised a new theory not previously pled and that any claim the outcome would have differed had the OB/GYN remained overnight was speculative.

The Court found that both defendants established prima facie entitlement to summary judgment and that plaintiffs failed to raise a triable issue of fact. The Court further held that the co-defendant nurse lacked standing to oppose the motions. Accordingly, all claims against the OB/GYN and the vicarious liability claims against MCB’s client medical group were dismissed.

## Summary Judgment Secured in Alleged Birth-Related Hip Injury Case



PARTNER KENNETH J. BURFORD, AND SENIOR ASSOCIATES BRANDON J. FERNANDES AND SARAH E.T. ERTLE

*New York County Supreme Court*

**Allegation:** Improper positioning during labor and delivery resulted in a right acetabular labral tear.

This case involved a then 29-year-old pregnant female with a significant history of back pain 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 tri-

al 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 acetab-

ular labrum.” Plaintiff alleged that the hip injury was a result of her positioning during the delivery. MCB was able to show, through 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.

## Judgment of Dismissal in Bench Trial Dental Case



SENIOR TRIAL PARTNER YUKO A. NAKAHARA AND SENIOR ASSOCIATE BRANDON J. FERNANDES

*Queens County Supreme Court*

**Allegation:** Failure to timely and appropriately perform a root canal resulted in an eight-month period of pain and suffering.

Following a bench trial in Civil Court, this dental malpractice action centered on allegations that MCB's client Medical Center failed to timely and appropriately perform a root canal resulting in an eight-month period of pain and suffering.

In its defense of the Medical Center, MCB meticulously established an evidentiary record demonstrating that the care rendered was, in all respects, adherent to the standard of care. Through the strategic presentation of expert medical testimony, MCB effectively illustrated that the Medical Center's providers and clinical staff did not, at any point, deviate from the standard of care. Furthermore, it was decisively shown that MCB's client Medical Center's actions were not the proximate cause of the plaintiff's alleged damages.

The testimony further elucidated the clinical decision-making process, confirming that the comprehensive treatment plan formulated during the plaintiff's initial emergency presentation was entirely consistent with accepted medical and dental protocols. MCB successfully argued that, despite the appropriateness and clinical viability of the recommended root canal therapy, the plaintiff later unilaterally elected to undergo a total extraction of the tooth in question.

## Summary Judgment Secured in Ovarian Mass Surgery Case



SENIOR TRIAL PARTNER ROSALEEN T. MCCRORY, PARTNER SAMANTHA E. SHAW, AND ASSOCIATE EDMUND T. RAKOWSKI

*Queens County Supreme Court*

**Allegation:** Failure to properly perform an ovarian mass removal and the administration of a morphine derivative despite a reported allergy resulted in an anaphylactic reaction and neurological deficits.

In this case, a then 45-year-old woman alleged that MCB's clients, a hospital, an OB/GYN surgeon, and an OB/GYN resident, failed to properly perform an ovarian mass removal surgery, improperly allowed morphine to be provided for anesthesia despite plaintiffs reported allergy, and failed to properly manage her anticoagulants and neurological symptoms postoperatively. Plaintiff claimed these failures resulted in an anaphylactic reaction that caused long-term neurological deficits. The plaintiff's husband asserted a derivative cause of action. The anesthesiologist, anesthesiology group, and attending neurologist were also named as co-defendants in the case.

MCB moved for summary judgment on behalf of its clients, utilizing expert opinions from a neurologist and an OB/GYN surgeon. In its motion, MCB argued that the ovarian mass removal surgery was properly indicated and performed skillfully, within the standards of care, and with no evidence of negligence. As to the alleged contraindicated use of morphine, MCB maintained that its clients appropriately deferred responsibility to the co-defendant anesthesiologist, for whom anesthesia was within the scope of practice. The anesthesiologist was aware of the plaintiff's reported morphine allergy and prescribed hydromorphone, a derivative, but not morphine itself, which was a reasonable and non-contraindicated alternative.

Moreover, MCB argued that the plaintiff's postoperative symptoms, left-lower extremity numbness and right-sided facial numbness occurring hours after surgery, were consistent not with an anaphylactic reaction but with a rare MRI-negative

stroke. MCB's experts opined that an allergic reaction to hydromorphone would have presented acutely and with different symptoms. They further opined that the plaintiff's postoperative condition was timely diagnosed and appropriately managed. Finally, MCB contended that the plaintiffs improperly relied on vague allegations not properly specified in the Bills of Particulars or Supplemental Bills of Particulars.

The Court granted MCB's motion for summary judgment, dismissing the Complaint in its entirety as to all MCB defendants. In the Decision, the Court decided that plaintiffs failed to raise a triable issue off act, inter alia, as to whether hydromorphone should not have been administered, or establish that the plaintiff suffered an anaphylactic reaction rather than an MRI-negative stroke.

## Summary Judgment Obtained in Squamous Cell Carcinoma Case

SENIOR ASSOCIATE DANIEL P. BORBET

*Kings County Supreme Court*

**Allegation:** Failure to timely diagnose and treat squamous cell carcinoma resulted in a below-the-knee amputation and the spread of cancer.

This matter involved a then 35-year-old plaintiff who alleged injuries arising from MCB clients' failure to timely diagnose and appropriately treat squamous cell carcinoma of the right lower extremity. Plaintiff claimed that the alleged negligence resulted in a below-the-knee amputation of the right leg, multiple surgical procedures, progression of the squamous cell carcinoma, chronic non-healing ulcers, and related injuries. It was further alleged that MCB's client physicians and hospital were negligent

in the surgical management of the plaintiff's condition. A derivative claim for loss of services was also asserted on behalf of the plaintiff's wife.

The Honorable Consuelo Malfre Melendez issued a 50-page Decision & Order finding that MCB's clients established a prima facie entitlement to summary judgment. Based on documentary evidence and an expert affirmation from a board-certified physician in dermatopathology and pathology, the Court found that defendants did not depart from accepted standards of care and did not proximately cause plaintiff's alleged injuries.

The Court held that all treatment rendered complied with accepted standards

of care, that plaintiff's amputation resulted from the development of linear scleroderma, and that the debridement and excision procedures were appropriate and did not cause the cancer to spread. The Court further found that any alleged delay in treatment was minimal and had no impact on the outcome.

In opposition, the Court found plaintiffs' expert unqualified to opine on the relevant standard of care and determined that the expert's opinions were conclusory and speculative, insufficient to raise a triable issue of fact. The Court also dismissed claims for lack of informed consent, negligent hiring and supervision, and *res ipsa loquitur*.

## Summary Judgment Obtained in Nephrectomy Case

SENIOR TRIAL PARTNER CHARLES S. SCHECHTER AND PARTNER ANINA H. MONTE

*Queens County Supreme Court*

**Allegation:** Failure to timely diagnose and surgically repair a small bowel perforation following a laparoscopic nephrectomy resulted in a worsening of the patient's condition.

The plaintiff in this matter was a private patient of a codefendant surgeon who performed a robot-assisted laparoscopic nephrectomy. Following surgery, the plaintiff was admitted to the medical surgical floor and developed an ileus on postoperative day three, which was evaluated by CT scan and interpreted by a codefendant radiologist.

The CT scan demonstrated free air consistent with postoperative changes, although a small bowel injury could not

be excluded. The plaintiff remained in the hospital, recovering and improving, until a sudden change in his condition on post-operative day seven, when a repeat CT scan demonstrated a small bowel perforation. The plaintiff was returned to the operating room, where the bowel injury was repaired by the codefendant and a non-party surgeon.

The plaintiff alleged that the codefendant radiologist misinterpreted the November 6, 2021, CT scan and further claimed that MCB's client hospital, through its resident and surgical staff, failed to bring the patient back to the operating room sooner, allowing his condition to worsen. In opposition to the summary judgment motion, the plaintiff also raised a new allegation that there was a failure to give

the patient oral contrast as ordered by codefendant surgeon.

The Court granted summary judgment, finding that MCB demonstrated that the plaintiff was a private patient of the codefendant surgeon and that MCB's client hospital staff did not deviate from the standard of care in following the surgeon's orders, plan and instructions. The Court further held that the plaintiff failed to overcome the defendant's prima facie showing with competent evidence and improperly raised new allegations for the first time in opposition. The codefendant radiologist also obtained summary judgment, and the Court therefore held that the hospital could not be held vicariously liable for his actions.

## Summary Judgment Secured in Labor and Delivery Case



SENIOR TRIAL PARTNER LAURIE ANN ANNUNZIATO AND PARTNER FIACHRA P. MOODY

*Kings County Supreme Court*

**Allegation:** Negligent performance of a contraindicated episiotomy during a labor and delivery admission.

This action was brought on behalf of a then 29-year-old married female patient, in which the plaintiff alleged that the co-defendant OB/GYN physician had negligently performed a contraindicated episiotomy on September 7, 2021, during the

plaintiff's labor and delivery admission at MCB's client hospital.

We argued that summary judgment was warranted because no independent acts of negligence were alleged against the hospital. The record established that the plaintiff was privately admitted for obstetrical care and treated throughout her prenatal course by a private physician, with a covering provider present at delivery pursuant to a private practice arrangement.

We further argued that the hospital could not be held vicariously liable under *Mduba* or any theory of ostensible agency. The evidence demonstrated that the plaintiff's relationship was exclusively with her private physician and that the covering provider was not a hospital employee. Under these circumstances, the alleged malpractice at issue could not be attributed to the hospital. Accordingly, summary judgment dismissing all claims against the hospital was warranted and granted.

## Summary Judgment Granted in Psychiatric/Suicide Case



PARTNER GREGORY J. RADOMISLI, APPELLATE PARTNER RICHARD WOLF, AND ASSOCIATE SHANNON L. STEWART

*Nassau County Supreme Court*

**Allegation:** Psychiatric malpractice and failure to perform an adequate suicide risk assessment resulted in death of patient with depression.

This matter involved allegations of psychiatric malpractice and wrongful death after a then 59-year-old male committed suicide while under the care of MCB's client psychiatrist. The psychiatrist began treating the decedent in November 2021 for a longstanding history of depression, though the patient had no prior history of suicidal thoughts or attempts.

Over the following three to four months, MCB's client psychiatrist treated the decedent and prescribed medications to address his symptoms which included lack of interest activities, problems with

sleep, and anxiety. At each appointment, the decedent repeatedly denied suicidal thoughts and showed improvement with medications. MCB's client psychiatrist saw the decedent on February 23, 2022 when the decedent indicated that he was feeling better, and had been brighter, and that his restlessness had also began to dissipate. The decedent then committed suicide by gunshot on March 4, 2022.

The Plaintiff brought a multitude of allegations including failures to appreciate the decedent's history, recognize and appreciate his symptoms, perform a suicide risk assessment, properly manage his medications, as well as claims for wrongful death.

With the assistance of our expert psychiatrist, MCB demonstrated that all treat-

ment rendered by our client psychiatrist was within the appropriate standard of care. MCB further argued that the decedent's mood was improving, and he was looking forward to the future, and that suicide in itself was an impulsive behavior that cannot always be predicted. Additionally, MCB relied on the decedent's wife's deposition testimony, which established that, even on the day of his suicide, he was making plans for the future and did not seem suicidal.

The Court found that MCB met all the necessary elements to establish a prime facie argument for summary judgment. The Court further held that the plaintiff's psychiatry expert opinions were purely speculative, conclusory, and contradicted by the record.

## Summary Judgment Secured in *Clostridioides Difficile* Treatment Case



PARTNERS JOHN M. BUGLIOSI AND ADAM T. BROWN, AND SENIOR ASSOCIATE KRISTEN E. GRIFFIN

*Rockland County Supreme Court*

**Allegation:** Negligent treatment of a *Clostridioides difficile* (*C. diff*) infection resulted in the patient's death.

This case involved allegations of negligent

treatment after the plaintiff was admitted 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.

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 provid-

ed 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.

## Summary Judgment Case Alleging Improper Dental Implant Placement



SENIOR TRIAL PARTNER CHARLES S. SCHECHTER, PARTNER VICTOR M. IVANOFF, AND ASSOCIATE KELEISHA A. MILTON

*Queens County Supreme Court*

**Allegation:** Negligent placement of dental restorations and a failure to obtain diagnostic imaging resulted in implant failure.

This case involved 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, and client complied with the standard of care by considering all relevant factors for dental restoration placement, such as the ante-

rior-posterior spread, occlusion, and bite alignment 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.

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.

## Summary Judgment Secured in Pressure Ulcer/Stroke Care Case

SENIOR TRIAL PARTNER YUKO A. NAKAHARA AND PARTNER STEPHEN C. LANZONE



*Queens County Supreme Court*

**Allegation:** Negligent care and management resulted in the development and progression of sacral pressure ulcers across multiple hospital admissions following a stroke.

This matter involved a plaintiff who presented to MCB's client hospital emergency department after suffering a stroke and remaining unresponsive on a sofa for most of the day. Upon arrival, plaintiff was intubated for airway protection, and redness and induration were noted in the sacral area. During the plaintiff's

three-week admission, however, she did not develop a pressure ulcer and was discharged in stable condition to a codefendant rehabilitation center.

Several weeks later, plaintiff returned to MCB's client hospital with altered mental status, and a stage 2 sacral ulcer was noted upon admission. Despite continued immobility and a preexisting ulcer, the sacral ulcer only marginally progressed. Plaintiff was again discharged in stable condition to a codefendant facility. During a final admission, plaintiff presented with a large unstageable sacral

ulcer, which was debrided at MCB's client hospital and showed signs of healing prior to discharge.

On behalf of the hospital, ICU and medicine attendings, and wound care personnel, MCB moved for summary judgment supported by a surgical critical care expert. MCB demonstrated that all indicated ulcer prevention measures were ordered and implemented. The expert further opined that the pressure ulcers were already evolving upon plaintiff's initial presentation due to prolonged immobility, and that progression

was unavoidable given plaintiff's critical illness and treatment.

Plaintiff opposed with an expert affirmation claiming pressure ulcers cannot

occur absent abuse or neglect and challenging the reliability of the documented skin protection protocols. The Court granted MCB's motion in its entirety,

finding plaintiff's expert opinions speculative, conclusory, and insufficient to raise a triable issue of fact.

## Dismissal in Civil Rights and ADA Claim Against Hospital



PARTNER GREGORY J. RADOMISLI

*United States District Court for the Southern District of New York*

**Allegation:** Deliberate indifference and constitutional violations resulted in medical complications and amputations.

This matter involved a plaintiff who brought a civil rights action against our client hospital in the United States District Court for the Southern District of New York, arising out of alleged medical treatment provided while the plaintiff was a detainee at Rikers Island.

The plaintiff asserted claims under the Americans with Disabilities Act, 42 U.S.C. § 1983, Monell liability, and related state law theories, alleging deliberate indifference to serious medical needs and other constitutional violations following a series of significant medical complications, including multiple amputations.

The Court granted dismissal of all claims, holding that the allegations failed to plausibly establish deliberate indifference or any constitutional violation. The

Court further found that the ADA claims improperly challenged the adequacy of medical care rather than alleging discrimination, and dismissed the Monell claims due to the absence of an underlying constitutional violation. The remaining state law claims were dismissed as time-barred and otherwise insufficiently pled, resulting in dismissal of the action in its entirety.

## Summary Judgment Granted Following Renewal and Reargument



PARTNER MICHAEL J. BORANIAN AND SENIOR ASSOCIATE TIMOTHY M. O'TOOLE

*Suffolk County Supreme Court*

**Allegation:** Medical care by treating physicians caused injury and sought to hold the Hospital vicariously liable on the grounds that the physicians were Hospital employees or agents.

This matter involved a successful motion for leave to renew and reargue the denial of summary judgment on behalf of

MCB's client hospital in Suffolk County Supreme Court.

The initial summary judgment decision was denied based upon the incorrect conclusion that non-party private physicians were employees of MCB's client hospital, thereby imposing vicarious liability upon the hospital.

MCB's original summary judgment motion had been opposed and only partially

granted, leaving vicarious liability claims pending against the hospital. MCB subsequently moved for leave to renew and reargue, arguing that the physicians at issue were private attendings and not hospital employees. Although plaintiff opposed the motion, the Court granted leave to renew and reargue and, upon reconsideration, fully granted MCB's summary judgment motion dismissing all remaining claims against the hospital.

## Dismissed Action Against State Veterans Facility



PARTNER GREGORY J. RADOMISLI

*United States District Court for the Eastern District of New York*

**Allegation:** Various causes of action arising out of the care, operations, and administration at a state-operated veterans nursing facility.

This matter involved claims asserted against a state-operated veterans nursing facility, and our client, the administrator of the facility, in the United States District Court for the Eastern District of New York. The Court dismissed the action for lack of subject matter jurisdiction.

The plaintiffs asserted claims arising out of care provided at a New York State veterans home, alleging various causes of action related to the facility's operations and administration. The Court granted defendants' motion to dismiss pursuant to Rule 12(b)(1), holding that the claims were barred by Eleventh Amendment sovereign immunity.

The Court found that the facility is an instrumentality of the State of New York and that both the facility and its administrator, sued in his official capacity,

are protected by sovereign immunity. Because neither the State nor its agencies had consented to suit and Congress had not abrogated immunity, the Court concluded it lacked subject matter jurisdiction and dismissed the action in its entirety.

The Court further noted that similar claims against state veterans' homes had been previously rejected on the same jurisdictional grounds and cautioned plaintiffs' counsel regarding the continued assertion of such claims.

MEDICAL MALPRACTICE:

## OTHER NOTABLE CASES

### Hospital Dismissed from Donor Organ Screening Case



SENIOR TRIAL PARTNER MICHAEL F. MADDEN AND ASSOCIATE DEBORAH F. AMPONSAH

*Erie County Supreme Court*

**Allegation:** Failure to properly screen and assess donor organs prior to liver transplant resulted in transmission of cancer and wrongful death.

This wrongful death lawsuit involved a liver transplant recipient where the plaintiff alleged that MCB's client hospital personnel failed to properly screen and

assess donor organs prior to a transplant performed at a separate facility. Following the liver transplant, pathology findings from the donor's kidney revealed evidence of melanoma. The decedent later developed liver cancer and died approximately 15 months after the transplant.

MCB argued that MCB's client hospital conducted an adequate inspection and ex-

amination of the donor kidney and timely and appropriately communicated all findings related to the donor kidney. MCB further established that the inspection and examination of the donor liver was not within the purview of MCB's client hospital. Following the completion of discovery, plaintiff voluntarily discontinued the claims against MCB's client hospital.

### Hospital Dismissed After Summary Judgment Reargument



SENIOR TRIAL PARTNERS KENNETH R. LARYWON AND YUKO A. NAKAHARA, AND APPELLATE PARTNER RICHARD WOLF

*Queens County Supreme Court*

**Allegation:** Vicarious liability for a surgeon's alleged negligence and a direct claim regarding the unavailability of surgical adhesion barriers.

This action involved allegations that a codefendant surgeon negligently performed surgery at MCB's client hospital. The Bill of Particulars alleged that MCB's client hospital was vicariously liable for the codefendant's negligence.

Just prior to the filing of the Note of Issue, plaintiff served an Amended Bill of Particulars by email, adding direct claims against MCB's client hospital, specifically relating to the absence of

adhesion barriers that the codefendant surgeon had testified at the deposition he would have used had they been available.

The Court initially granted the codefendant surgeon's motion for summary judgment but denied MCB's motion due to the absence of an expert affirmation, despite the purely legal arguments advanced. The Court held that the surgeon properly performed the surgery and did not proximately cause plaintiff's alleged injuries. The Court also held that the Amended Bill of Particulars was not properly served on the codefendant by email, and therefore he was not required to address the adhesion barrier allegations.

MCB moved for leave to reargue, or alternatively to dismiss pursuant to CPLR 3211(a), arguing that the Court's decision granting summary judgment to the codefendant established the law of the case and required dismissal of all vicarious liability claims. MCB further argued that the Amended Bill of Particulars was also not properly served on MCB, and therefore the newly asserted direct claims against MCB's client hospital were not properly before the Court.

The Court granted reargument and dismissed the Complaint insofar as asserted against MCB's client hospital, including both the direct and vicarious claims.

### Dismissal Secured in Alleged COVID-19 Negligence and Immunity Case



SENIOR TRIAL PARTNER PETER T. CREAN, PARTNERS EMMA B. GLAZER AND CASEY M. HUGHES, AND SENIOR ASSOCIATE LAUREN BISOGNO

*Queens County Supreme Court*

**Allegation:** Negligent management of COVID-19 treatment resulted in skin breakdown and paralysis, as well as the alleged negligent perfor-

mance of a required tracheostomy.

This case involved alleged negligent treatment of a plaintiff who presented to a non-party hospital on April 9, 2020, with symptoms of COVID-19. He was treated

with multiple medications, intubated on April 14th due to respiratory failure, and transferred to MCB's client hospital on April 15th for refractory hypoxia. During his hospitalization, he developed skin breakdown and a spinal cord infarct

resulting in paralysis, and required a tracheostomy. Plaintiffs alleged negligence in failing to prevent skin breakdown, diagnose and treat the spinal cord infarct/quadruplegia, and properly perform the tracheostomy.

MCB moved to dismiss based on COVID-19 immunity under the EDTPA and PREP Act, supported by expert affirmations in pulmonology, critical care, and emergency medicine. MCB argued the care occurred at the height of the pan-

demic when COVID-19 treatments were evolving, and that all care was directly impacted by hospital-wide pandemic responses. MCB also argued plaintiff's injuries stemmed from use of a mechanical ventilator—a protected countermeasure under the PREP Act.

Plaintiffs opposed, arguing the motion was premature and sought discovery to establish gross negligence. They further argued defendants failed to prove good faith or that the pandemic impacted

plaintiff's care. No expert affirmation was submitted in support.

In reply, MCB emphasized the plaintiff's treatment was clearly related to COVID-19 and that no allegations of gross negligence were pleaded.

The Court agreed, finding defendants' documentary evidence and expert affirmations established prima facie entitlement.

## Dismissal Secured in Chronic Pain Treatment Case



PARTNERS EMMA B. GLAZER AND CASEY M. HUGHES, AND SENIOR ASSOCIATE SARAH E.T. ERTLÉ

*New York County Supreme Court*

**Allegation:** Claims that a cervical spinal cord stimulator implant was unnecessary and that negligent aftercare caused an infection and implant malfunction requiring removal.

This matter involved a then 46-year-old female pro se plaintiff with a medical history significant for ADHD, anxiety, back pain, depression, hyperlipidemia,

bipolar disorder, chronic pain syndrome, and a sleep disorder. On June 14, 2022, the plaintiff presented to MCB's client hospital for the permanent implantation of a cervical spinal cord stimulator, leads, and a pulse generator to treat her chronic pain syndrome. Plaintiff subsequently claimed that the spinal implant was "criminally unnecessary" and that defendants improperly provided improv-

er aftercare, leading to a malfunction and an infection that required the device to be removed.

Following the pro se plaintiff's failure to appear in court, MCB presented an oral application for dismissal before Judge Kelley. The Court granted the application, dismissing the action against the defendants in its entirety.

## Hospital Discontinued from Wrongful Death and Pressure Ulcer Case



SENIOR TRIAL PARTNER MICHAEL F. MADDEN, PARTNER ADAM T. BROWN, AND ASSOCIATE ANDREW J. FISHER

*Westchester County Supreme Court*

**Allegation:** Exacerbation of an infection, neurological injury, and bedsores allegedly contributed to the wrongful death of a patient with a pre-existing brain injury.

This case involved allegations of exacerbation of infection, neurological injury, bedsores, and wrongful death involving a 52-year-old patient with an anoxic brain injury sustained several weeks prior. The

plaintiff's decedent was transferred from a codefendant hospital to MCB's client hospital, where she received neurological and critical care for over a month while remaining in a persistent vegetative state. She was ultimately transferred to a long-term care facility, where she expired.

MCB moved for summary judgment supported by expert affirmations in neurology, critical care, and nursing. The defense argued that the patient's persistent

vegetative state was irreversible during the admission, that only minimal progression of a pre-existing pressure ulcer occurred due to appropriate wound care, that all treatment met the standard of care, and that none of the alleged injuries were caused by any acts or omissions at the client hospital. In response to the motion, the plaintiffs voluntarily discontinued the action against MCB's client.

## *Partner Promotions*

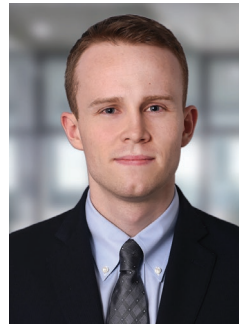
MCB proudly announces the promotion of five talented attorneys to Partner between June 2025 and April 2026.



CASEY M. HUGHES



STEPHEN C. LANZONE



FIACHRA P. MOODY



KENNETH J. BURFORD

## *Welcome New Attorneys*

We are pleased to introduce the newest additions to the MCB team. These talented attorneys bring diverse insights and a shared commitment to legal integrity, further expanding our firm's collective depth and dedication to service.



TAYLOR C. EAGAN



MCKENZIE L. NELSON



BRIAN M. FRANKOSKI



IGOR M. MURTA



MATTHEW P. NEALON



JEFFREY D. LINEHAN



JOHANNA R. AGUILERA



CHRISTOPHER BELALCAZAR



JULIANNA BARON

## *Happy Retirement*



SENIOR TRIAL PARTNER  
WILLIAM P. BRADY

Bill Brady's tenure at Martin Clearwater & Bell LLP has been characterized by an unwavering commitment to the defense of physicians and hospitals in medical malpractice cases. For more than forty years, he has built a reputation for excellence and professional integrity that has earned him the respect of colleagues and adversaries alike. We thank Bill for his remarkable service and dedication to MCB and the Firm's valued clients, and the impact he has made in the field of medical malpractice defense. We wish him the very best as he moves into his next well-deserved chapter.

## 12 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 2025, 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.

### 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



Martin Clearwater & Bell LLP is proud to recognize the many initiatives and events led by our Diversity & Inclusion Committee throughout 2025–2026. The committee continues to support a welcoming and collaborative environment while promoting engagement, connection, and a strong sense of community across the firm. —Yuko A. Nakahara



During the past year, MCB hosted a comprehensive Continuing Legal Education seminar dedicated to workplace inclusion and professional awareness. The program was designed to encourage ongoing learning and provide attorneys and staff with valuable tools and insight to help foster a collaborative, respectful, and supportive work environment.



For the fourth year running, MCB hosted Suited for Success, teaming up with law schools and community partners to help students in need build their professional wardrobes—and their confidence—as they begin their legal careers. The event also featured mock interviews with MCB attorneys and other valuable networking opportunities.

## Community & Camaraderie



PARTNERS VS. ASSOCIATES SOFTBALL TOURNAMENT



MARIA FARERI CHILDREN'S HOSPITAL TOY DRIVE



THANKSGIVING POTLUCK



FOOD DRIVE



CHILDREN'S HOLIDAY PARTY



4TH ANNUAL SUITED FOR SUCCESS

## CLE Presentations

### ***Discovery Disputes, Court Conferences, Summary Judgment Motions***

EMMA B. GLAZER, ESQ. | 4/22/26

### ***Reporting on Medical Records***

EMMA B. GLAZER, ESQ. | 4/15/26

### ***Trial Overview***

JACQUELINE D. BERGER, ESQ. | 4/8/26

### ***The Limited Scope of Purely Emotional Distress Damages in New York***

BARBARA D. GOLDBERG, ESQ. | 2/11/26

### ***Managing Cyber Risk in a Rapidly Evolving Threat Landscape***

CHARLES S. SCHECHTER, ESQ., STEVEN J. SKIDMORE | 1/14/26

### ***COVID-19 Immunity: Where it Stands 5 Years Later***

RICHARD WOLF, ESQ. | 12/10/25

### ***Implicit & Explicit Bias***

YUKO A. NAKAHARA, ESQ., KAREN B. CORBET, ESQ., CASEY M. HUGHES, ESQ. | 11/12/25

### ***Time Management and Billing***

ANINA MONTE, ESQ. | 10/22/25

### ***Navigating Discovery and Motions***

GREGORY J. RADOMISLI, ESQ. | 10/15/25

### ***Client Intake and Pleading Fundamentals***

MICHAEL F. MADDEN, ESQ. | 10/9/25

### ***Deposing the Plaintiff: Procedure and Practice***

JOHN M. BUGLIOSI, ESQ. | 10/9/25

### ***Preparing for the Co-defendant EBT***

ADAM T. BROWN, ESQ. | 10/9/25

### ***Skills for Medical Record Evaluation***

VICTOR M. IVANOFF, ESQ. | 10/9/25

### ***Court Conference Management***

NICOLE S. BARRESI, ESQ. | 10/9/25

### ***Defending Orthopedic Malpractice: Lessons from a Unanimous Jury Verdict***

MICHAEL J. BORANIAN, ESQ. | 9/10/25

### ***Valuation of Nursing Home Cases***

KAREN B. CORBETT, ESQ. | 7/15/25

### ***Trial Preparation Guidelines***

CHARLES S. SCHECHTER, ESQ. | 7/9/25

### ***Successful Defense of Attempted Suicide Case: The Trial and Appeal***

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

### ***The Basics of Reviewing a Medical Record***

ANINA H. MONTE, ESQ. | 5/29/25

### ***Preparing and Handling Court Conferences***

SAMANTHA E. SHAW, ESQ. | 5/29/25

### ***Pleadings and Initial Client Contact***

JACQUELINE D. BERGER, ESQ. | 5/29/25

### ***Plaintiff's Depositions from a Defense Perspective***

JACQUELINE D. BERGER, ESQ. | 5/29/25

### ***Discovery and Discovery Motions***

ELIZABETH J. SANDONATO, ESQ. | 5/29/25

### ***Co-Defendant Depositions***

AMY E. KORN, ESQ. | 5/29/25

## Speaking Engagements & Sponsorships

### ***Depositions in Medical Malpractice Cases***

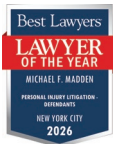
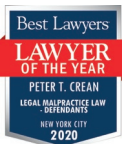
PRESENTED AT FORDHAM UNIVERSITY, SCHOOL OF LAW  
JACQUELINE D. BERGER, ESQ. | 2/24/26

### ***The Valuation of Nursing Home Cases***

PRESENTED AT NATIONWIDE  
KAREN B. CORBETT, ESQ. | 7/15/25

### ***AHRMNY Sponsorship***

FULL DAY CONFERENCE & RECEPTION | JUNE 2025 & 2026



**PARTNER ELECTED TO THE AMERICAN COLLEGE OF TRIAL LAWYERS:**

Senior Trial Partner Peter T. Crean

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

**2026 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:** 12 Partners were listed in the 2026 edition of *The Best Lawyers in America®*: Laurie Ann 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.

**BEST LAWYERS' ONES TO WATCH® RECOGNITION:** 16 MCB attorneys were recognized in the 2026 edition of the *Best Lawyers: Ones to Watch® in America*: Nicole S. Barresi, Brandon J. Fernandes, Emma B. Glazer, Kristen E. Griffin, Casey M. Hughes, Victor M. Ivanoff, Amy E. Korn, Stephen C. Lanzone, Michael B. Manning, Fiachra P. Moody, Graham T. Musynske, John Rohan, Kerona K. Samuels, Jennifer M. Wanner and Richard Wolf.

**2025 SUPER LAWYERS AND RISING STARS SELECTIONS:** 14 MCB Partners were selected to the 2025 New York Metro Super Lawyers list. 6 Partners and 5 Partners and 1 Associate were selected to the 2025 New York Metro Rising Stars list.

**BEST LAW FIRMS® RECOGNITION:** MCB has been named in the 2025 edition of Best Law Firms® as a Tier 1 national firm in Health Care Law. In the same edition, the Firm was named as a Tier 1 firm in New York City for three practice areas: Health Care Law, Medical Malpractice Law, and Personal Injury Litigation (Defendants).

**2 PARTNERS NAMED BEST LAWYERS® "LAWYER OF THE YEAR" IN NEW YORK CITY:** Senior Trial Partners Peter T. Crean (2020) Legal Malpractice Law – Defendants; and Michael F. Madden (2026) Personal Injury Litigation – Defendants.

**2025 MPL INDUSTRY DEFENDER AWARD:** Senior Trial Partner Kenneth R. Larywon was one of only five recipients selected nationwide by the Medical Professional Liability Association.

**2 PARTNERS RECEIVE 2025 MEDPRO AND MLMIC "RISING STARS" RECOGNITION:** Elizabeth J. Sandonato and Michael B. Manning

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