

September 11th

VICTIMS COMPENSATION FUND CASES

WE PREVIOUSLY advised that we are representing the relatives of a number of victims of the September 11th attacks before the Victims Compensation Fund, without charging a fee.

Ken Halperin is representing a family who lost their son while he was working in the World Trade Center on 9/11. For the past year Ken has worked with the family and economists to prepare a brief for submission to the Special Master. In the brief Ken attempted to show that this then 31 year old claims examiner had a future earnings capacity that far exceeded his current salary. In addition to the economic report, Ken used statements from family members and other information, such as his stated intent to continue his education as a means to show the Special Master that a higher economic award was justified. These efforts resulted in a presumed award of \$1,052,225. The economic award represented approximately 80% of the requested amount. However, in an effort to further assist this family in obtaining a fair award Ken attended a hearing with the family and Kenneth Feinberg, the Special Master, on May 5, 2004 to argue that a higher award is justified.

Phil Russotti represented the mother of a thirty-nine year old decedent who was single and his mother's sole support. He was an insurance company analyst who was killed in the attack on Two World Trade Center. Despite the decedant's modest earnings, Phil was able to prove not only the support for his mother, but the value of the services he provided to her, and with the aid of an economist, computed the future replacement cost of those services. Even under the stringent guidelines of the Fund, Phil obtained an award from Kenneth Feinberg, Special Master, of \$681,325 for economic and non-economic loss, which the client has accepted.

We are pleased to participate in this *pro bono* effort to assist the relatives of the September 11th attack. ■■■

Update

POLICE BRUTALITY:

\$17.5 Million Dollar Verdict Against the City of New York for Police Shooting

PHIL RUSSOTTI recently obtained a \$17.5 million dollar verdict for a twenty-six year old



man who was shot by an off-duty New York City Police Officer rendering our client paraplegic. The incident arose in March of 1995 in Yonkers, when our client mistook the off-duty officer for a friend who owed him money and went up to him from behind asking him for the money. The plaintiff realized his mistake, apologized to the officer, but the officer continued to argue and when the plaintiff walked away, the officer shot him in the back. The officer, a now retired NYC detective, testified to a very different version of events, claiming that the plaintiff grabbed him from behind around the neck, jammed a hard object into his back, and demanded money. The officer claimed he handed over his wallet and \$15. After being pushed to the ground, the officer got up, drew his off-duty revolver and told the plaintiff to "Stop!, Police!" because he was going to arrest him. The plaintiff stopped and turned backward toward the officer. The officer, believing the plaintiff had a gun and was going to shoot him, fired one shot into his back. The officer recovered a folded knife from the plaintiff's pocket and \$15 was found on the street near

plaintiff's feet, when police arrived on the scene.

In November 1996, the plaintiff was tried in Westchester County for Robbery in the First Degree and related charges. He was acquitted of all charges. Phil defended him in the criminal case.

Phil argued in both the criminal and civil trials that when the officer realized he shot an unarmed man in the back and that he was facing the possibility of a murder charge if the man died, he fabricated a robbery story and dropped the \$15 to the ground before the police arrived, to make it look as if he was robbed.

In the civil trial in Manhattan, the jury specifically found that there was no robbery and that the police officer provided false testimony about the robbery to the Grand Jury which indicted the plaintiff. Finally, the jury found that the officer was not justified in believing that the plaintiff was about to shoot him and that the officer used unreasonable force in shooting the plaintiff. The plaintiff, now 32 years old, is a paraplegic confined to a wheelchair. The jury awarded \$4 million for past pain and suffering, \$1 million for malicious prosecution, \$4.5 million for future medical therapy and rehabilitation, and \$8 million dollars for future pain and suffering. On post trial motions the trial court only reduced the malicious prosecution verdict by \$500,000, but sustained the rest of the verdict, which is now on appeal. ■■■

Settlements & Verdicts

\$6.2 Million Dollar Record Verdict in Putnam County

Medical Malpractice - Above-the-Knee Amputation of Leg

PHIL RUSSOTTI obtained what our research has shown to be the largest verdict in the history of Putnam County, which was recently upheld by the Trial judge. This was a \$6.2 million dollar verdict in a case involving the failure of an orthopaedic surgeon to properly diagnose a growth in the back of plaintiff's knee. The defendant doctor believed it was a benign cyst and operated to remove the cyst despite a recommendation from a radiologist, who performed an MRI, to perform a biopsy prior to surgery. The surgery that the defendant performed was inappropriate to save the leg in the event the mass was cancerous and the defendant admitted under cross-examination that because of that, he reduced plaintiff's chances of successfully saving his leg if it turned out to be cancer. Needless to say, it was cancer and after repeated surgeries at Memorial Hospital, plaintiff had to undergo an above-the-knee amputation of his leg.

Phil got the defendant doctor to admit on the witness stand that he did not obtain a proper informed consent from the plaintiff prior to his surgery because he did not advise the plaintiff that the radiologist had recommended a biopsy. Phil also got the defendant's expert oncologist to admit that an article written by a doctor from Memorial Hospital fifteen years earlier, was authoritative and recommended the very treatment recommended by plaintiff's expert, namely, radiation to shrink the tumor prior to surgery which would have increased the chances of limb salvage surgery. The defendant's expert did not suggest this treatment on his direct examination and his admission that this procedure was done at major cancer centers throughout the country undermined his credibility.

The jury awarded \$322,430.00 for past medical bills, \$1,500,000.00 for past pain and suffering, \$400,000.00 for future equipment costs, and \$4,000,000.00 for future pain and suffering. ■■■

\$650,000 Recovery

Wrongful Death

KEN HALPERIN settled this negligent security case during mediation for \$650,000.00. The decedent was a 29-year-old resident of a group home for the mentally disabled. On 11/6/99 the decedent made her way onto the roof of the building and subsequently fell off, landing in an alleyway approximately 40 feet below. The building was equipped with an alarm system that was supposed to go off if an individual attempted to gain access to the roof. On the date of the plaintiff's accident, however, the alarm never went off. A subsequent

investigation revealed that the power for the alarm system had inadvertently been disengaged and therefore did not go off when plaintiff went onto the roof.

As a result of the fall plaintiff sustained blunt force injuries; a fractured left femur; and a fractured left talus. Plaintiff was taken by ambulance to Elmhurst Hospital where she underwent two operations to repair the fractured femur and talus. She remained in the Hospital heavily sedated and unable to communicate until she died of acute respiratory failure on 11/13/99.

\$800,000 Recovery for Legal Malpractice

50-Year-Old Construction Worker Injured When a Piece of a 10-Foot Wall Collapsed on Him

PAULA M. GRECO obtained an \$800,000 recovery at a mediation for a 50-year-old man who was injured while he was working at a construction site. Our client



sustained multiple fractures to his skull, temporal, frontal, zygomatic and orbital bones along with herniated discs at L4-L5 and L5-S1. He also sustained an injury to his

left knee and left shoulder. Additionally, our client had surgery to repair a possible nasal fracture. Fortunately, our client did not sustain any cognitive injury as a result of this incident and his fractures healed.

Plaintiff was injured as he was building a foundation in a seven-foot trench, when portions of an improperly braced building wall collapsed on him. Paula argued at the mediation that the building owner left this wall remaining at the site so the project could be called a renovation instead of new construction, thereby reducing the owner's cost and building department safety oversight of the project. The defendant received several OSHA violations and was subsequently fined.

Our client had initially retained another attorney to handle this matter, but he failed to timely file and serve a Summons and Complaint within the three year statute of limitations; accordingly, the client could not sue anyone for these serious injuries. We started a legal malpractice case against the attorney for not filing the case on time, which resulted in this recovery. ■■■

Settlements & Verdicts

\$760,000 Recovery

42-Year-Old Construction Rigger Falls Off Sidewalk Bridge



STAVROS SITINAS negotiated a \$760,000 settlement for a 42-year-old construction rigger who fell through a sidewalk bridge suffering fractured vertebrae in his lower back and herniated discs in his neck. We sued the general contractor and the owner of the building under New York State Labor Law.

Stavros contended that the general contractor failed to provide our client with a safety harness and that his injuries were causally related to the failure to provide that safety equipment.

The defendants contended that our client was at fault because he was in the process of dismantling the sidewalk bridge and stepped onto an unsecured portion, which caused him to fall. They further contended that there was no place to which the safety harness could be secured. Stavros successfully obtained summary judgment on the issue of liability and the trial would have proceeded solely on the issue of damages, which was the impetus for the insurance carrier to settle this case. ■■■

\$1,200,000 Settlement

Medical Malpractice - Resident Physician Improper Treatment - Seizures and Memory Loss

AS JURY SELECTION was to begin, a settlement was reached by **Edward Bithorn** on behalf of a 64 year old retired woman who had been admitted to Brooklyn Hospital with presumed gastrointestinal bleeding. In treating her, defendants placed a central line catheter which caused her to develop neurological symptoms including weakness, slurring of speech, and eventually seizures upon removal of the device three days later.

After consulting with expert witnesses, Ed planned a two-pronged attack. First, that placement of the catheter was contraindicated and amounted to a training exercise by the young resident

physicians at this teaching hospital, and second, that defendants failed to timely call for a neurology consult once the patient began having symptoms that deprived her of early treatment and less severe permanent neurological damages. The patient continues to suffer from a seizure disorder and memory impairment. To convince a jury there was liability, Ed was prepared to show that even though plaintiff's memory of the event was poor, the pre-trial testimony obtained by the defendant resident physicians was contrary to certain notations in the Hospital record, thus raising an issue about defendants' credibility. ■■■

\$1,250,000 Recovery

Medical Malpractice - City Hospital Failed to Perform Glucose Testing - Coma and Death

EDWARD BITHORN and Kathy Kettles-Russotti combined efforts to obtain a \$1,250,000 settlement, on the eve of trial, for the family of a 35 year old man who had been treated with prednisone for three months for a lung condition known as sarcoidosis. It was claimed that the dosage was excessive and caused the patient's glucose levels to become significantly elevated resulting in hyperglycemia. Three days prior to his death, the patient returned to the defendant clinic where neither urine nor blood testing was done which would have revealed the abnormal glucose, despite the patient reporting symptoms of excessive thirst and urinary frequency. When the patient was taken to a different hospital three days later, his glucose was elevated more than 20 times the range of normal, and was causing seizures. He lapsed into a coma and died later that day.

In arguing that defendant was responsible, Edward had to prove that the symptoms that should have alerted defendant to perform urine and blood testing were actually reported to the doctor and nurse at the clinic, since the clinic records did not document certain symptoms. The settlement award provided compensation to the family for loss of decedent's earnings as a messenger, and loss of parental care and guidance to his 8 year old son, even though the child's birth certificate was left blank in naming the father. ■■■

Settlements & Verdicts

\$1,250,000 Recovery

Medical Malpractice - Negligent Hospital Care - Pain, Suffering & Death



WE ARE often retained as Trial Counsel to assist other law firms in the trial of complex medical malpractice cases. Recently, WRS attorney **Edward**

Bithorn handled one such case where we were contacted by the initial law firm after discovery had been completed and the case was on the trial calendar. The case involved a 64-year-old woman with Parkinson's Disease who was admitted to an ICU with a life-threatening systemic infection known as septicemia. After 3 weeks in the ICU she was transferred to the regular floor where she developed pulmonary edema, congestive heart failure and malnutrition, while under the defendant physicians' care. The pulmonary edema occurred because of an excess of fluid from the pulmonary vessels accumulating in her lungs. The fluid caused the heart to pump inefficiently, resulting in congestive heart failure. Instead of prescribing diuretic medications to reduce the fluid, nothing was given, nor were her intravenous fluids limited. Compounding the problem was the malnutrition which defendants attempted to correct by feeding the patient through a nasogastric tube. Because she suffered from

Parkinson's, a neuromuscular condition that affected her swallowing, she was at risk for aspiration from the feeding solution. The edema that went untreated also made it impossible for her bowels to absorb the nasogastric feedings. We claimed that total parenteral nutrition, in which nutrients are infused directly into the blood vessels instead of through the gastrointestinal tract, was the appropriate treatment. Unfortunately it was not given and the patient aspirated, went into respiratory arrest, and sustained brain damage. Defendants claimed her arrest was a result of her complicated medical conditions, but not malpractice.

The client was in a nursing home in a coma for three years before she died. She was survived by a husband and three adult children. The settlement was reached as Ed began jury selection.

Although there was no loss of support, the usual element of damages in a wrongful death case, Ed concentrated on the pain and suffering decedent suffered prior to her death. Defendants argued that because of the coma, she had no conscious awareness of pain and suffering and the law would not allow a recovery. Ed was prepared to prove that the structural areas of the brain responsible for receiving and interpreting painful stimuli were intact and therefore the notations of responsiveness that appeared in the nursing home records demonstrated her awareness of her condition. ■■■

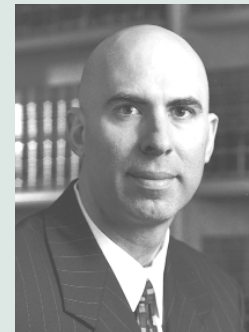
Wrongful Death *(continued from page 2)*

Ken was able to obtain a very beneficial result through the use of experts that we retained who were prepared to show that despite plaintiff's heavy sedation, she was still able to understand her surroundings and her dire situation. This assisted in convincing the defendant that the plaintiff was entitled to more significant damages for her conscious pain and suffering. ■■■

\$400,000 Recovery

Premises Liability - Total Knee Replacement

CLIFF SHAPIRO negotiated a \$400,000 settlement for a 56-year-old woman who fell on a broken, cracked and defective step at the entrance of a



Brooklyn convenience store. An employee of the defendant's store testified at a deposition that the store was responsible for the maintenance and repair

of the steps. He also testified that he knew of no prior accidents or violations at the subject premises. The plaintiff was admitted to the Hospital for Special Surgery for five days and Kingsbrook Medical Center for Rehabilitation for three weeks.

Although Plaintiff had pre-existing lateral compartment osteoarthritis, Cliff was able to convince the insurance company's adjuster that the Plaintiff's necessity for a total knee replacement surgery was the direct result of her fall on the defective step.

If you have any questions pertaining to legal matters, call us at

(212) ACCIDENT

Settlements & Verdicts

\$900,000 Recovery

Failure to Diagnose Biliary Tract Cancer



KATHLEEN KETTLES-RUSSOTTI recently settled a very difficult medical malpractice case involving the death of a 62-year-old woman.

She had routine gallbladder surgery in 1997 at a Long Island hospital. Unbeknownst to her or the surgeon, the pathologist at the hospital failed to properly identify cancerous changes to the gallbladder in the specimens sent from the surgery. Fourteen months later her skin turned yellow (jaundice), and cancer was found in the liver. Despite surgery to remove portions of the biliary tract and the liver and multiple courses of

chemotherapy, she died in June of 2000. The defense was adamant that a diagnosis of gallbladder cancer was a statistical death sentence since it is almost always an aggressive disease which responds poorly to treatment. However, Kathy was able to convince the defendants that, in fact, it could not be established whether this was a gallbladder cancer or a primary biliary tract cancer because at the time of diagnosis the cancer had spread and the findings in the gallbladder may have come from the biliary tract. Primary biliary cancer has a much better prognosis. Further, even if it was primary gallbladder cancer and had spread to the liver bed, it would have been resectable at a much earlier stage, giving this wonderful woman a much better chance at survival. After analyzing the records, the medical literature, interviewing a prior treating physician, conducting multiple depositions in Florida and New York, and consulting with two pathologists and a surgical oncologist, Kathy convinced the defendants we had a good chance to prevail at trial. When the defense realized this was not going to be as easy as they had originally predicted, they initiated settlement discussions after they received our expert witness disclosure. Many cases concerning the misdiagnosis of cancer result in defense verdicts because of the difficulty in proving that the malpractice, and not the cancer, was the cause of death. Only vigorous prosecution and sophisticated medical-legal analyses can increase the odds in favor of the patient. ■■■

\$300,000 Recovery Medical Malpractice

JASON RUBIN obtained a settlement for \$300,000 in a medical malpractice case involving the failure to diagnose a myocardial infarction in a 63-year-old woman. Decedent presented to defendant hospital with complaints of epigastric pain and pain in both arms. A cardiac workup was performed which indicated a borderline EKG and elevated cardiac enzymes. Despite these abnormalities, decedent was discharged with a

diagnosis of gastritis. She died approximately 5 days later while alone at home.

We were able to obtain this result despite the fact that decedent's death was not witnessed, no autopsy was performed, decedent was an unemployed widow, and did not provide financial support to anyone. ■■■

\$175,000 Recovery For Dog Bite Victim

WILLIAM HEPNER obtained a \$175,000.00 recovery for a dog bite victim in her late 20's after jury selection. Plaintiff contended that defendant's mixed-breed German Sheperd, Spike, jumped over her four foot high fence and bit her on the hand and leg before attacking her dog, Buddy, who was tied up. The dog had apparently attacked plaintiff's dog 7 months earlier.

The plaintiff contended that she suffered a bite to the ring finger on her dominant hand that required minor surgery consisting of a flexor tendon decompression as well as a debridement procedure. Plaintiff will suffer a very slight permanent restriction and occasional pain in the finger. She also sustained 2 puncture wounds in her leg which left an area of numbness.

Bill would have proved that the defendant's dog had vicious propensities and was repeatedly permitted to escape defendant's property. Defendant contended that plaintiff's dog provoked Spike, and that plaintiff got in between the two dogs, causing her injuries. ■■■

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