

Update



William P. Hepner



Stavros E. Sitinas

New Partners

We are pleased to announce that effective January 1, 2005, William P. Hepner and Stavros E. Sitinas have become partners of the firm.

WILLIAM P. HEPNER joined WRS as a trial lawyer in 1998 and has tried and litigated numerous significant automobile, premises and construction accident cases. Bill graduated *magna cum laude* in 1983 from the State University of New York at Albany, and received his J.D. degree in 1991 from the Benjamin N. Cardozo School of Law, where he was Editor-In-Chief of Cardozo's International Law Journal, the *Cardozo New Europe Law Review*. Bill attended Cardozo, after a career which included corporate sales, restaurant management, as well as professional singing. His diverse experience prior to law gives him an added insight into the make-up of juries and those he represents. Bill's calm and unflappable demeanor in court gives him credibility with jurors, and allows him to withstand the rigors of trial without losing focus. He has also been successful

(continued on page 5)

STAVROS E. SITINAS joined WRS as a trial lawyer in 2001, focusing on the trial of significant personal injury cases and has obtained sizeable jury verdicts for our clients in some of New York's most challenging venues. He handles a wide variety of cases in the areas of automobile litigation, product liability and construction accidents.

After earning an Associates Degree and Marketing Degree from Boston University, Stavros spent the next seven years in professional sales in both the construction and medical industries. This experience has provided Stavros with an ability to be comfortable with anyone, put people at ease and evaluate people quickly, traits which are invaluable in dealing with juries. He graduated from Quinnipiac College School of Law in 1996 and was admitted to practice law in the State of New York in 1997. Stavros also studied at

(continued on page 5)

\$16 Million+

Partner obtains total pay-outs in excess of sixteen million dollars for two medical malpractice cases involving brain damage.

PHIL RUSSOTTI recently obtained settlements for two brain damaged individuals and their families totaling guaranteed pay-outs in excess of \$16,000,000. One case involved a now seven-year-old boy who was brain damaged at birth because of a delay in performing a C-section and in resuscitating him following birth. He has learning disabilities, ADHD and is borderline mentally retarded. He will not be able to live alone as an adult. The case settled during jury selection for \$5,250,000, much of which was invested in an annuity for the family which has a guaranteed payout of \$10,081,734 and a possible lifetime payout of \$22,286,689.

The second case concerned a

(continued on page 4)

New Associates

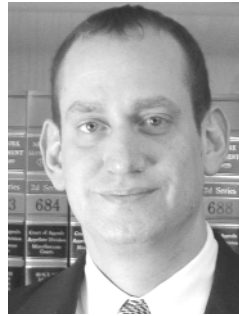


Colleen A. Kirchoff

We are pleased to have **COLLEEN A. KIRCHOFF** join our Medical Malpractice Department. As an experienced nurse-attorney, specializing in medical malpractice litigation, Colleen aggressively investigates areas of negligent care or malpractice and the associated injuries for our clients. She is dedicated to helping victims of the medical system who fall through the cracks, victims who have received inadequate care, and victims who have been treated by incompetent physicians, healthcare providers and hospitals. From the inception of the case up to the closing arguments at trial, she relentlessly fights to obtain a settlement or verdict to fully compensate our clients for their injuries resulting from malpractice.

Colleen graduated from Marquette University in 1982 with a Bachelors Degree in Science and Nursing and is Certified as a Registered Nurse in Wisconsin, Illinois, and New York. She practiced nursing at the University of Illinois Hospital for seven years in the Coronary Care Unit, Medical Intensive Care Unit, Chest Thoracic Intensive Unit, and Surgical Intensive Care Unit. Colleen was involved in cardiac research studies and with the first heart and lung transplant performed at the hospital. While working at the hospital, Colleen obtained her juris doctorate and graduated from The John Marshal Law School in 1988. Colleen has practiced personal injury and medical malpractice law for the past 14 years. Professional memberships include the New York State Trial Lawyers Association and the New York State Bar Association.

She is married with two children. ■■■



Scott Stern

SCOTT STERN joined Wingate, Russotti & Shapiro in January, 2004 after spending seven successful years as a solo practitioner, during which time he maintained an Of Counsel association with our firm. Scott, a skilled legal writer, is currently the attorney in charge of the firm's appeals. Scott also briefs and argues complex motions that arise during the course of litigation involving a broad range of matters, including labor law, products liability, premises liability, automobile liability, insurance coverage, and municipal liability. "My collaboration with the trial attorneys throughout the course of litigation allows the attorneys to come together and immediately identify the legal issues that effect the case as well as those that may appear on the horizon. With this coordination, the firm is able to develop and present a focused and effective case to the court." After receiving his undergraduate degree in Accounting from the University of Maryland in 1991, Scott earned his J.D. from Brooklyn Law School in 1994.

His past and present professional associations include the New York State Bar Association, the New York State Trial Lawyers Association, the Association of the Bar of the City of New York, and the Brooklyn Bar Association, where he was a member of the Lawyers Helping Lawyers Committee. Scott has also done significant pro bono work representing individuals afflicted with mental illness. ■■■

Settlements & Verdicts

Bicycle Accident - \$800K Settlement at Mediation

Alternative Dispute Resolution, i.e., mediation, can be an effective vehicle to quickly and efficiently adjudicate cases. **KENNETH J. HALPERIN** recently obtained an \$800,000 settlement at mediation for our client who was struck



by an automobile while he was riding his bicycle. The accident occurred in an intersection with both parties blaming each other for the accident. As

a result of the accident, our client sustained a herniated cervical disc, which required a cervical fusion approximately two (2) years later.

During the discovery phase of the case, Ken obtained an Order of preclusion against the defendant because of his failure to appear at a Court Ordered deposition. This meant that if we proceeded to trial only our client's version of the accident would be heard. Prior to our obtaining that Order, the defendant's insurance company had not made any offer to settle the case. The insurance company, recognizing the untenable situation it was in, fired their lawyer and brought in new counsel who attempted to overturn the Court Order. Prior to the Court deciding their motion, they suggested mediation, to which we agreed. ■■■

\$1.25 Million Recovery

During Trial for Medical Malpractice Resulting in End-Stage Kidney Failure



JASON RUBIN recently settled a medical malpractice case for \$1.25 million after approximately two weeks of trial in Staten Island. The case involved a then 39-year-old man who presented to his primary care physician at a medical group with complaints of multiple joint aches and fatigue. Blood tests indicated that he was anemic and that he had an elevated sedimentation rate, an indicator of inflammation in the body. Urine tests indicated that he had microscopic blood and protein in the urine. At trial, Jason presented evidence that accepted medical practice under these circumstances required that simple blood tests known as a BUN and creatinine be performed, to evaluate plaintiff's kidney function. These test were not performed by the defendants.

Over the next several months, the plaintiff's condition continued to worsen. After finally presenting to a hospital, he was diagnosed with end stage kidney failure as a result of a disease known as Wegener's Granulomatosis, an autoimmune vasculitis which causes inflammation in the kidneys. He required dialysis for one and a half years until he was able to obtain a kidney transplant. Interestingly, the plaintiff's wife was a sufficient match and she donated her kidney to him.

At trial, Jason presented evidence that if the defendant doctors had performed BUN and creatinine tests when they noted microscopic blood and protein in his urine, plaintiff's kidney disease would have been diagnosed earlier and he likely would not have required dialysis and a kidney transplant. Given the venue of the case, this was a very substantial recovery. ■■■

Motorcycle Accident

\$200K Settlement for client who skidded on rocks in roadway

KENNETH J. HALPERIN represented a motorcycle driver in upstate New York who was ejected from his motorcycle when he ran over a patch of small rocks in a roadway, causing him to lose control of his bike. Ken initiated a very difficult suit against a rural upstate municipality alleging that it failed to properly design the roadway gutters and drains and also failed to properly main-

tain the road. During the course of discovery, we conducted multiple depositions and were able to prove that after a rainstorm several days prior to the accident, the County failed to follow their own internal guidelines and State regulations regarding inspecting its roadways. We also showed, through expert testimony, that the roadway gutters were improperly designed because rain

Settlements & Verdicts

\$500,000 Verdict

Patron injured by pot hole at outdoor flea market

WRS partner STAVROS SITINAS obtained a \$500,000 jury verdict for a 64-year-old woman who was injured while shopping at an outdoor flea market in a parking lot. While browsing at various items on display, the plaintiff's foot slid down a depression and lodged in a crevice. As a result, she fell and badly fractured her ankle, requiring her to undergo surgery for the insertion of a plate and screws.

Stavros sued the owners of both the flea market and the parking lot which operated at the location during the week, alleging that the parking lot was defective and dangerous for patrons of the flea market. The defendants contended that the lot was reasonably safe, that the plaintiff failed to see an open and obvious condition, and that they had no specific knowledge of the defect.

Stavros was able to prove that both defendants had knowledge of the defect, as they had made numerous prior pot hole repairs to the parking lot, including the area where the plaintiff fell. Furthermore, Stavros retained an engineer who opined that the parking lot was not safe to walk around and that the defendants used sub-standard repair methods which contributed to the creation of this depression and crevice. Stavros also emphasized that the reason plaintiff did not see the hole, was because she was looking to her right and left at the merchandise for sale. He argued that after diverting her attention to the merchandise it was trying to sell, the defendant should not benefit from the fact that plaintiff wasn't looking at the ground. ■■■

\$1.3 Million Medical Malpractice

Verdict for infant-plaintiff who suffered brachial plexus injury at birth

EDWARD BITHORN recently obtained a \$1,300,000 jury verdict, after a three week medical malpractice trial in Staten Island, on behalf of a 6-



year-old girl who suffered a brachial plexus injury known as Erb's palsy. We claimed that this injury occurred at birth when the nerves of the baby's shoulder were stretched and torn as the defendant obstetrician pulled her from the birth canal.

The baby was delivered vaginally using a vacuum extractor on an emergency basis due to hypoxia (lack of oxygen to the fetus). The defense argued that if not delivered within minutes, brain damage or death would have occurred. In proving malpractice, Ed showed that even though an emergency existed, the delivery by vacuum

extraction was negligent because the baby was too high within the birth canal to safely attempt this maneuver, thereby putting the baby at risk for having a shoulder get stuck on the bones of the pelvis (dystocia). Even though the defendant and the hospital record did not mention dystocia, Ed convinced the jury it existed from a note written in the defendant's medical chart after the birth, which referred to dystocia. Ed argued that the only safe means of delivery was by Caesarean section. We proved the doctor had seven other obstetrical patients that same day which may have effected the care given.

The injury has left the infant plaintiff with limited use of her arm and she is likely to require surgery. No offer of settlement was ever made throughout the trial and we expect the verdict to be upheld on appeal. ■■■

Motorcycle Accident (continued from page 3)

caused the rocks which filled the gutters to spread across the roadway rather than towards the embankment, causing the unsafe condition on which our client spun out. It also helped our case that a storm drain in the area of the accident had grass growing out of it, indicating a lack of maintenance in the area.

At the conclusion of discovery the County moved for summary judgment, which is frequently granted in these cases because of the high burden of proof required to prove negligence

against municipalities in roadway design cases. Ken accumulated enough evidence to make this one of those rare cases in which defendant's motion for summary judgment was denied and the case was ordered to proceed to trial.

As a result of the accident, the plaintiff sustained a fracture to his talus, which required surgery, a fractured clavicle and bi-lateral tears of his rotator cuffs. This case settled during jury selection for \$200,000. ■■■

Settlements & Verdicts

Hepner *(continued from page 1)*

over the years in developing novel theories of liability to withstand the defense bar's unrelenting attempts to keep plaintiffs from having their day in court.

In addition to his responsibilities as one of the firm's trial lawyers, Bill is an Arbitrator in the Small Claims Court in Manhattan, where he decides disputes between parties who desire an expeditious resolution to their cases and agree to have their matters decided by an arbitrator instead of a judge. Bill is charged with fairly and judiciously resolving these disputes, and his decisions are final. ■■■

Sitinas *(continued from page 1)*

Brooklyn Law School and Fordham University's School of Law. He is admitted to practice in the United States District Courts for the Southern, Eastern and Northern Districts of New York and is an active member of the New York State Trial Lawyers Association, the Association of Trial Lawyers of America and the Eastern Orthodox Lawyers Association. ■■■

\$500,000 Recovery

For Pedestrian Outside His Disabled Car

After jury selection, **BILL HEPNER** obtained a \$530,000 recovery for our client who was injured when his car got a flat tire on the Cross Island Parkway. Bill claimed that there was only a small shoulder for plaintiff and his mother, who was following him, to pull off the road because of the negligence of a construction company working in the area. He argued that a larger shoulder had been blocked by barrels placed there by defendant. After plaintiff's mother parked on the shoulder of the exit ramp, her car was struck from behind by another vehicle and was pushed into plaintiff, who was standing in between his car and his mother's vehicle.

Considering the location of the vehicles, liability would have been difficult to prove against the construction company, because the investigating police officer could not

corroborate that the shoulder was blocked. However, Bill obtained a multitude of construction documents in discovery, and together with an expert witness, was able to persuade the construction company to provide a substantial portion of the settlement because its own documents did not appear to support its position. He also obtained a settlement from the insurance company of plaintiff's mother's vehicle, even though her car was not moving at the time of the accident, and was hit in the rear by another car. Bill claimed that she should not have stopped where she did.

Plaintiff, who was collecting disability insurance at the time of the accident due to three prior back surgeries, required a fourth surgery to his previously herniated disc, as well as arthroscopic surgery to both of his knees. ■■■

\$16 Million+ *(continued from page 1)*



Phillip Russotti

Rochester, New York gentleman who had cervical fusion surgery following which he developed signs of airway obstruction. However, the nurse in attendance failed to call a code for assistance for over fifteen minutes, despite his deteriorating condition. The 54-year-old suffered severe brain damage because of decreased oxygen to his brain until an emergency tracheotomy/tracheostomy was finally performed some fifteen minutes after the episode began. In addition to other medical conditions which had rendered him totally disabled prior to this incident, he is now paralyzed, speechless and blind. The annuities purchased with the settlement funds will return a guaranteed payment of

\$6,500,000 over ten years.

With the settlement funds, both families have been able to purchase homes specifically adapted to accommodate these handicapped individuals and to obtain the best therapies and care to tend to their needs. This will enable these individuals to reach their now limited potentials.

Despite the tragic nature of these cases, the benefits to the victims of medical malpractice and their families, make the difficult, demanding and exacting nature of this kind of litigation worthwhile when it significantly contributes to a better quality of life for the individuals and those who care for them. ■■■

Settlements & Verdicts

\$1.95 Million

Partner Obtains Decision for 44-Year-Old Forklift Operator

BILL HEPNER recently obtained a \$1.95 million damages award at a binding arbitration on behalf of a client who was injured in a work-related accident. Plaintiff was injured when merchandise he was unloading with a forklift from the defendant's truck became wedged at the top of the tractor-trailer's rear door, making it necessary for him to stop and attempt to push the stacked merchandise by hand to keep it from falling over. As a result of pushing against the stack of boxes, plaintiff sustained three herniated discs in his lower back, which had been in a weakened condition from an

earlier injury and years of degeneration.

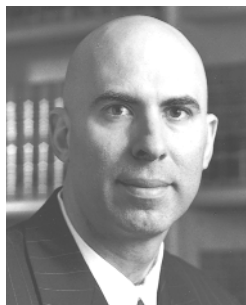
Plaintiff, who was barred from bringing a claim against his employer by the Worker's Compensation Law, sued the produce delivery company which packed its truck, on the theory that it repeatedly improperly stacked the boxes too high inside the truck, making it difficult to maneuver them out.

Plaintiff had fusion surgery, which Bill argued was due to this accident and not his prior back condition. Plaintiff also had additional surgeries as a result of a post-operative infection which developed at the donor site of the bone graft

used for the lumbar disc fusion. Bill proved that although plaintiff had prior back problems, pushing the stacked boxes was a substantial factor in rendering a previously hard working laborer, unable to work. Plaintiff was found to be somewhat at fault for his injury, since he voluntarily undertook the activity of pushing the boxes. Nevertheless, Bill retained a trucking expert, who overcame the significant hurdle of convincing a three-judge panel that defendant's negligence was a substantial factor in causing the injury and not plaintiff himself. ■■■

\$350,000 Recovery

Professional violinist struck by falling object



CLIFF SHAPIRO obtained a \$350,000 settlement for a 32-year-old woman, who was a violinist with the orchestra for the Broadway show "Phantom of the Opera". She was struck by a grapefruit-sized stone which fell from a building on Lexington Avenue in New York City.

The defendants claimed that the stone did not come from their building. However, we procured the services of an

expert engineer who was able to match the stone which struck the plaintiff with the facade of the defendants' building. In addition, we sent an investigator to interview tenants in the building, who told us that there were prior problems with the building's facade. The incident occurred during the Puerto Rican Day Parade and although the parade had nothing to do with the accident, the defendants' attorneys also attempted to divert the blame to the parade.

We arranged for an on-site inspection, attended by an attorney from our firm, the defense attorneys, and the respective engineering experts. At the conclusion

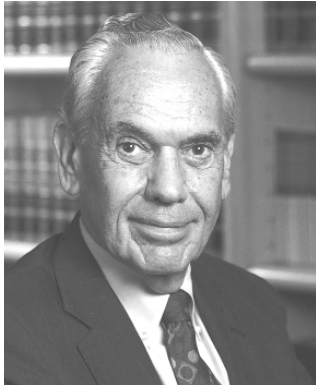
of that inspection, the defendants had no alternative but to concede that the stone came from their building, and indicated to us that they wished to enter into settlement negotiations.

Plaintiff sustained multiple injuries, including injuries to both knees, requiring arthroscopic surgery, and disc herniations at C6-C7 and L4-5. ■■■

Settlements & Verdicts

\$300,000 Recovery

Full Amount of Insurance Policy - Pedestrian Struck by Motor Vehicle



WILLIAM A. WINGATE, recently negotiated a \$300,000 settlement for a 71-year-old woman who was struck by a van and suffered multiple fractures of her right knee, requiring open reduction and internal fixation, a subdural hematoma and fracture of the right occipital bone.

Bill, who conducted all of the depositions, contended that as our client was crossing a street in the designated crosswalk, the light facing her changed from a steady white figure ("Go") to a flashing red light. When she got halfway across the street, and was in front of the defendant's motor vehicle that had been stopped for a red light, his car suddenly lurched forward and struck her.

The defendant argued that the light had changed to green for him and he then moved forward. The defendant also produced two eye-witnesses who testified that when the plaintiff started to cross the street, the light had already turned to red against her.

However, Bill argued that even if the light was red for our client, she was already in front of the van when he started to move forward. If he had looked to his left, or even in front of him, instead of looking at the light to his right before he took his foot off the brake, the accident would not have happened. Bill refused to settle for less than the full \$300,000 insurance policy covering the van. He threatened the defendant's carrier with a bad faith claim against them for not protecting their insured if they didn't settle for the policy.

With the trial date a week away, the case was settled for the \$300,000. ■■■

\$400,000 Recovery

For Medical Malpractice Case Involving Death of a 3-Year-Old Boy

Just prior to jury selection, **JASON RUBIN** settled a medical malpractice case for \$400,000. The case involved the death of a three-year-old boy who was brought to the defendant hospital by his mother because he had vomited multiple times the night before. He was diagnosed with dehydration and, as treatment, he was given multiple boluses of fluid. Despite the administration of fluid, the boy's condition continued to worsen. When he was finally evaluated by a pediatric cardiologist many hours after his admission, he was diagnosed with a condition known as myocarditis inflammation of the muscular walls of the heart. Later that night, he passed away.

Had the case gone to trial, Jason would have presented evidence that the boy's condition was not consistent with dehydration because he did not improve with fluid administration and because he required supplemental oxygen to keep his blood oxygen saturation in the normal range. Accordingly, the cardiologist should have evaluated the patient sooner, which would have likely led to an earlier diagnosis and timely treatment. Evidence also would have been presented that administration of fluid is contraindicated for a patient with myocarditis and that the multiple boluses given to the child were a substantial factor leading to his death.

This was a substantial recovery for the death of a young child, obtained because the liability Jason developed was overwhelming and there would have been a strong jury reaction to the parents' very sympathetic account of the events leading up to their son's death.

■■■

Wingate, Russotti & Shapiro, LLP
Attorneys At Law

The Graybar Building
420 Lexington Avenue Suite 2750
New York NY 10170

Address Service Requested

UPDATE is published for our clients and friends. This newsletter is not a substitute for legal advice. If you have any further questions or comments, seek advice from professional counsel. We encourage your comments, ideas and questions.

www.wrslaw.com

Wingate, Russotti & Shapiro has a presence on the Internet. We invite our clients, friends and attorneys to visit our website to learn more about our firm. Our website includes our firm profile, attorney biographies, as well as significant settlements and verdicts. Comments, ideas and questions can be sent via email: wrs@wrslaw.com. We look forward to hearing from you.

Wingate, Russotti & Shapiro, LLP
Attorneys At Law

The Graybar Building
420 Lexington Avenue Suite 2750
New York NY 10170

Telephone: (212) 986-7353
Fax: (212) 953-4308

Email: wrs@wrslaw.com
www.wrslaw.com

Philip Russotti
Clifford H. Shapiro
Kenneth J. Halperin
William P. Hepner
Stavros E. Sitinas

Edward G. Bithorn
Jason M. Rubin
Scott A. Stern
Colleen A. Kirchoff

OF COUNSEL
William A. Wingate
Paula M. Greco

PRACTICE AREAS

Auto Accidents
Construction Accidents
Medical Malpractice
Negligence
Personal Injury
Premises Liability
Product Liability
Work-related Accidents

Referrals

We want you to think of us as your law firm. If you have a legal matter that needs attention, let us know. If we can't handle the matter, we will refer you to a competent firm that can. Please feel free to refer us to your friends and family for their legal needs. We welcome the opportunity to help.