

UPDATE

2015 NEWSLETTER

MEDICAL MALPRACTICE

\$12,085,000 SETTLEMENT



Kathleen Kettles recently obtained a federal court order approving a settlement of \$12,085,000 in a case involving the failure to timely deliver an infant to a first-time mother, resulting in severe brain damage to the child who is now 6 years old. This child cannot speak, walk or talk and must be tube fed. Her parents are completely devoted, but their day to day existence is filled with dealing with doctors' appointments, emergency room visits, outside therapies and managing or providing their child's need for extensive nursing services. "I am truly in awe of this family and despite the heartache of having a child this disabled, it has been a joy to work for them. This settlement will lessen the burden on this incredible family."

Kathy heads the Medical Malpractice team. Though a practicing attorney for almost 28 years, she was an RN for ten years prior to going to law school.

During the litigation, Kathy worked extensively with well known, respected experts in the fields of obstetrics, maternal fetal medicine, neonatology, pediatric neurology, pediatric neuroradiology and a life care planner, to prepare the case for trial. It is this attention to detail which results in an extremely favorable settlement for her clients.

"When I was a nurse, I often felt powerless to really help my patients, but as a nurse attorney, I get to help secure a child's future, and there is no greater feeling of satisfaction."



ANNOUNCEMENTS

FIVE WINGATE, RUSSOTTI, SHAPIRO & HALPERIN ATTORNEYS NAMED NEW YORK WOMEN LEADERS IN THE LAW 2015



As Wingate, Russotti, Shapiro & Halperin, LLP, enters its 25th year of practice, the firm has assembled a team of personal injury and medical malpractice lawyers who rank among the best in New York State for representing plaintiffs.

“Not only do our attorneys have extensive experience in personal injury litigation, but they are also well versed in the courtroom, meaning we can expertly prepare and try the most complicated of cases,” observes partner and co-founder Philip Russotti. “Simply put, our clients receive the best representation from experienced litigators with exceptional judgment.”

Among these litigators are five attorneys who were recognized this year as New York Women Leaders in the Law: **Kathleen Kettles**, **Paula Greco**, **Nicole Gill**, **Brielle Goldfaden**, and **Veronica Sewnarine**.

A former registered professional nurse, **Ms. Kathy Kettles** brings more than 25 years of medical and legal experience to her practice, in which she concentrates exclusively on medical malpractice and products liability cases. Her results comprise millions of dollars in verdicts and settlements for her clients; and in 2015, she has already secured a settlement of more than \$12 million in a case involving a baby who was brain damaged at birth.

“Medical malpractice cases require the ability to understand complex medical issues and causation problems, and Kathy, with her combined medical and legal expertise, is one of the best there is at handling these issues,” Russotti notes.

Like Kettles, **Ms. Paula Greco** has also been handling complicated plaintiffs’ personal injury litigation for more than 25 years. In her practice she focuses on premises liability and automobile accident cases, and her many notable results include a \$1.5 million recovery in a premises accident case involving an elevator-related injury. “Paula has been with us since we started the firm in 1990, and she is excellent at conducting depositions in these complicated cases,” Russotti says. “She is tough as nails and relentless.”

Ms. Nicole Gill, who has 14 years of legal experience, ranks among the city’s top trial attorneys, with the unique advantage of having served as a defense attorney for the New York City Law Department’s Corporation Counsel prior to joining the firm. In one of her most recent trials, Gill obtained a \$1.2 million verdict in a hotly contested vehicle accident case, despite the fact that the firm’s client, a pedestrian, had difficulty explaining how she was struck.

Since joining the firm in 2012, **Mrs. Brielle Goldfaden** has distinguished herself in a number of challenging general negligence cases. Already, she has achieved multiple six-figure results, including a \$750,000 settlement at trial in a case involving a three-car accident where the client, a doctor, made a terrific recovery and returned to work. These recoveries have led to her inclusion in The Best Lawyers in America, the National Trial Lawyers’ “Top 40 Under 40” list, and the Super Lawyers’ “Rising Stars” recognition.

Mrs. Veronica Sewnarine has been with the firm since 2013, and during that time she has assisted in all phases of medical malpractice litigation, from inception through trial. Beyond her legal practice, she is actively involved in a number of women’s professional organizations—such as the New York Women’s Bar Association, the Queens County Women’s Bar Association, and the Asian American Bar Association of New York—where she seeks to advance the status of women within the profession.

“These five women epitomize the caliber of attorney you would expect to find at this firm,” Russotti says. “Their dedication to clients and the profession is illustrated in the high quality of their work, which is all directed toward one goal—obtaining the best result for each and every victim of negligence they represent.”

ANNOUNCEMENTS

WINGATE, RUSSOTTI, SHAPIRO & HALPERIN JOIN INAUGURAL CLASS OF NEW YORK MEDICAL MALPRACTICE HALL OF FAME



VerdictSearch, an affiliate publication of the *New York Law Journal*, announced on October 10, 2014 its first ever group of honorees for the Verdict and Settlements Medical Malpractice Hall of Fame. The list includes three cases handled by Phil Russotti.

The cases, *Diego v. Lin Zhu, LLC*, *Galindo v. Westchester County HealthCorp*, and *Alvarez v. Sherman* are 3 of 25 medical malpractice verdicts and settlements included in this year's Hall of Fame group. The selected cases were the 25 largest malpractice settlements and verdicts in New York over the past five years as determined by *VerdictSearch* and the *New York Law Journal*.

Wingate, Russotti, Shapiro & Halperin LLP, was one of only 17 law firms statewide that were recognized. Senior partner, Phil Russotti and only one other attorney in the state lead all attorneys with 3 of their cases included in the Hall of Fame.

Diego v. Lin Zhu was settled for \$10,700,000 after plaintiff suffered a severe head injury due to a fall at work. Plaintiff did not receive a timely CT scan and suffered a stroke, causing her to remain in a wheelchair. *Galindo v. WCHC*, which settled for \$10,200,000, concerned an infant that was not treated properly for symptoms of herpes, causing brain damage that could have been avoided with timely diagnosis and proper medication. *Alvarez v. Sherman* was settled for \$10,000,000, a case where a doctor ignored fetal distress and the baby was ultimately born with brain damage.

A dinner was held on Thursday, November 20, 2014 at the University Club of New York to honor the chosen attorneys and firms. The WRS firm attended where Phil Russotti accepted the three awards for his work on the selected cases in front of peers and other honorees.

CONSTRUCTION

CONSTRUCTION ACCIDENT \$4 MILLION SETTLEMENT FOR PLUMBER



Wingate, Russotti, Shapiro and Halperin partners Philip Russotti, Kenneth Halperin & Mitchell Kahn Combine To Obtain \$4 Million Dollar Settlement.



Phil Russotti obtained a \$4,000,000 settlement for our client, a 47 year old plumber who was injured in a construction accident at the Kings County Courthouse. A duct which was being dismantled struck him in the head as he walked through the area wearing his hard hat. It was not secured with ropes or pulleys and fell onto our client's head.



The defendant contended that appropriate safeguards were used, the plaintiff was warned on two occasions preceding the incident to avoid the area because of the potential hazard, and that he removed yellow caution tape to enter the area immediately before the incident occurred. The defendant maintained that the plaintiff was a recalcitrant worker, which constituted a defense under the labor law.

Mitch Kahn established at depositions that the workers doing the dismantling, for amusement purposes, spent some time watching the night arraignments at the Courthouse, which remained open, and then sat around drinking coffee until almost 6:30am. This caused them to start work when the day shift was arriving, exactly what they were not supposed to do.

A co-worker of the defendant's company heard the plaintiff scream, rushed to him and called 911. In a sworn statement, the witness indicated that several minutes earlier she observed the defendants working without pulleys or ropes and simply cutting the hangers that secured the duct. The witness's statement also reflected that no caution tape was in the area. Furthermore, the witness indicated that several minutes before the incident occurred she chastised the workers for conducting their work in an unsafe manner. The witness moved following the incident and when ultimately found several years later, she indicated that she had no recollection of the details contained in the statement. However, Phil took her deposition specifically to allow her to explain that the contents of her statement were true and accurate when made and signed. Thus, we established that in the absence of current recollection and in view of the foundation established in the witness's deposition, the statement would be admitted as a past recollection recorded exception to the hearsay rule, greatly strengthening our case.

As a result of the defendant's negligence, the plaintiff suffered a concussion as well as lumbar and cervical herniations. Approximately 1 ½ years after the event the plaintiff underwent a lumbar fusion that included the installation of a titanium cage. Approximately eight months later, the plaintiff had an initial cervical fusion. However, because of pseudoarthrosis, the plaintiff required a second cervical fusion approximately two years later. The plaintiff further contended that he suffered a mild traumatic brain injury that left him with moderate, but permanent, memory and concentration deficits.

During negotiations, the defense relied on reports

of the treating neuropsychologist who found that the testing appeared to reflect a degree of malingering on the part of the plaintiff. However, at trial we would have pointed out that in subsequent testing, the plaintiff's results improved, which would be inconsistent with someone who was malingering. The plaintiff contended that he was permanently unable to work in a physical capacity and that he sustained a significant diminution in earning capacity. However, he had a limited earning history, which defendant capitalized on in arguing to reduce the lost earnings claim.

The case settled on the day of jury selection for \$4,000,000.

CONSTRUCTION ACCIDENT \$3.75 MILLION SETTLEMENT FOR BRICKLAYER



Wingate, Russotti, Shapiro & Halperin partner Phil Russotti.

Our client, a 50 year old bricklayer, contended that a dumpster that was situated on the forks of a hoisting machine that was descending a ramp, fell from the forks and toppled approximately six inches to the ground, pinning him against a wall. The plaintiff maintained that irrespective of whether the dumpster fell because the container was not properly secured, had inadequate hydraulics or if it was driven onto a flimsy ramp, the container was not properly operated or secured by hooks which were available to prevent it from falling.

The plaintiff related that as the load was descending the ramp, a wheel at the right front corner broke off. He indicated that as he and another worker pushed from behind, another wheel, at the left front corner also broke off. The plaintiff then squatted in order to pick up the now

wheel-less front end of the device. Plaintiff's foreman, who was at the back of the device, moved the device forward, which slipped and pinned plaintiff against the wall.

We argued that the defendants owner and General Contractor should be absolutely liable under Labor Law Sec. 240 (1). The plaintiff maintained that he suffered bilateral crush fractures to the feet, necessitating three surgeries, including an arthrodesis, and that future surgery may be required. The plaintiff contended that he will suffer permanent pain that will require pain medication, has a limp and that he is permanently unemployable in a physical labor position.

The defense moved for Summary Judgment, denying that Sec. 240 should apply. The plaintiff countered that even if the elevation was very slight, it was nonetheless the effect of gravity which caused the dumpster to fall onto the plaintiff and cause the injuries. We cross-moved for Summary Judgment on the Sec. 240 claim, and the motions were pending at the time of the settlement.

The case settled for \$3,750,000 after two days of mediation.

CONSTRUCTION ACCIDENT \$2.75 MILLION RECOVERY FOR ELECTRICIAN



Wingate, Russotti, Shapiro and Halperin partner Kenneth Halperin obtained a settlement at mediation in the amount of \$2,750,000 for a 50 year old electrician who was injured in an accident on a construction site.



The accident in question occurred at a new building which was being constructed. After a lunch break,

SETTLEMENTS & VERDICTS

plaintiff and his co-worker were waiting for the hoist elevator to bring them back to their work area. The hoist elevator was situated on a platform approximately four to five feet above the ground and surrounded by a safety rail. While the plaintiff was waiting for the elevator, he and his co-worker were leaning on the safety rail which suddenly came loose and caused them both to fall to the ground.

Mitch Kahn was able to establish during depositions that the platform was used for deliveries throughout the day. He further established that there were no inspections done by the general contractor to ensure that when the subject rail was removed for a delivery, that it was properly reattached afterward.

At the conclusion of discovery, plaintiff moved for summary judgment pursuant to Labor Law 240(1) and defendant cross-moved to dismiss arguing that plaintiff was not entitled to the protection of the Labor Law because he was not working at the time of the accident. The Court agreed with plaintiff and granted summary judgment.

As a result of the accident, plaintiff aggravated pre-existing back disease and sustained herniated discs in both his lumbar and cervical spine. He was required to undergo an interbody fusion at L4-5 and at C4-5 and C5-6. Defendants argued that the cervical spine injury was degenerative.

Shortly after the accident, plaintiff began developing headaches and symptoms of memory loss and vision difficulties. Although plaintiff did not strike his head and was not diagnosed with a concussion, we obtained an expert to argue that plaintiff may still have sustained cognitive deficits from an undiagnosed concussion as a result of the whiplash effect of the fall and the movement of his brain within his skull.

\$1.25 MILLION RECOVERY FOR CONSTRUCTION TRIP AND FALL OVER A PIECE OF MASONITE



Wingate, Russotti, Shapiro and Halperin partner Kenneth Halperin obtained a settlement in the amount of \$1,250,000 for a 39 year old man who was injured in an accident on a construction site.



The accident occurred while the plaintiff was in the process of repairing bricks on the parapet wall of the roof of a residential apartment building in Manhattan. After laying several bricks, plaintiff stood up and stepped back to get a better visual of his work. As he stepped back he tripped and fell over a piece of masonite that was curled up in a corner.

Mitch Kahn, who handled depositions, established that when plaintiff started work, the masonite was not there and that someone discarded it improperly near where he was working. We argued that there was a violation of Labor Sect. 241(6) and N.Y. State Industrial Code Sect. 23-1.7.

Plaintiff's co-worker and foreman, however, stated that the masonite had been there when they started work and was protecting the roof of the building while they were working. Defendants argued that since the masonite was properly covering the roof, and thus a necessary piece of equipment at the site, plaintiff was not entitled to recover.

As a result of the accident, plaintiff sustained a herniated disc that required surgery, and elbow and knee injuries that also required arthroscopic surgery.

MEDICAL MALPRACTICE

MEDICAL MALPRACTICE \$3 MILLION SETTLEMENT



Prior to trial, **Wingate, Russotti, Shapiro & Halperin partners Phil Russotti and Jason Rubin** obtained a \$3,000,000 settlement on the eve of trial in a medical malpractice/wrongful death case arising out of a defendant OB/GYN's failure to recommend a bilateral salpingo-oophorectomy (removal of the ovaries and fallopian tubes) in conjunction

with hysterectomy, resulting in subsequent development of ovarian cancer.

In April 2005, when decedent was 52 years old, she underwent a hysteroscopy and biopsy with the defendant OB/GYN. The results of this biopsy demonstrated endometrial hyperplasia—an abnormal proliferation of cells of the lining of the uterus and a pre-cancerous condition which increases risk of ovarian cancer. The defendant recommended a hysterectomy. Decedent's husband, who was present during the visit when the hysterectomy was recommended, asked whether his wife's fallopian tubes and ovaries should also be removed. According to the plaintiffs, the defendant OB/GYN recommended against removing the tubes and ovaries because this would induce menopause.

In June 2005, decedent underwent a hysterectomy, and the tubes and ovaries were not removed. In May 2007, decedent developed pelvic pain and, upon workup, a pelvic mass was noted. She thereafter underwent exploratory surgery which revealed advanced (Stage IIIC) ovarian cancer. Decedent died of ovarian cancer

in April 2013. During the six year period between her diagnosis of cancer and her death she endured significant pain and suffering.

On behalf of decedent and her husband, Wingate, Russotti, Shapiro & Halperin commenced a medical malpractice action and alleged that the defendant OB/GYN departed from accepted medical practice in recommending against removal of the fallopian tubes and ovaries during the 2005 hysterectomy. Specifically, we alleged that plaintiff was near menopause at the time, and removing the tubes and ovaries would have eliminated the risk of development of ovarian cancer in the future. We claimed that the failure to remove the ovaries and tubes allowed decedent to develop ovarian cancer. The defendant OB/GYN contended that he did make a recommendation to decedent to remove the tubes and ovaries, but she refused. We claimed that this defense was refutable, however, inasmuch as none of the OB/GYN's office notes or hospital notes ever indicated that such a recommendation was made or that plaintiff refused. All of the settlement was attributed to the pain and suffering decedent suffered, which was a significant settlement for those damages.

FAILURE TO DIAGNOSE BREAST CANCER \$2.3 MILLION SETTLEMENT



Wingate, Russotti, Shapiro and Halperin partner Jason Rubin obtained a \$2,300,000 settlement in a medical malpractice action involving a failure to timely diagnose breast cancer. Plaintiff, a

50 year old school teacher, went for a screening

SETTLEMENTS & VERDICTS

mammogram at defendant medical group in 2010, which was read as negative. One year later, plaintiff underwent another screening mammogram, read by the same radiologist as in 2010 which now indicated that there was a suspicious density which required follow up. Additionally, the radiologist dictated an addendum to this report that stated that the report of the 2010 mammogram study was not reflective of his dictation, i.e. that there was a transcription error. The 2010 study, in fact, showed a suspicious density which was not reported. As a result, there was a one year delay in the diagnosis of plaintiff's breast cancer.

Plaintiff was diagnosed in 2011 with Stage IIB breast cancer. She underwent neoadjuvant chemotherapy, then lumpectomy and radiation therapy. Approximately one year later, she

developed a recurrence, which required her to undergo a bilateral mastectomy with extensive breast reconstruction, multiple revision surgeries and another course of chemotherapy.

We claimed that the radiologist was negligent for failing to report the suspicious density in the 2010 mammogram and, even if there was a transcription error, the radiologist was negligent for failing to discover the error and signing off on the report indicating that the study was benign. We claimed that if the cancer had been diagnosed one year earlier, it would have been Stage I and plaintiff would have required only a lumpectomy and radiation treatment. Additionally, her chances of suffering a recurrence would have been substantially diminished.

The case settled for the full extent of the defendants' malpractice liability policies.

AUTOMOBILE

TRUCK ACCIDENT \$3.3 MILLION RECOVERY



Wingate, Russotti, Shapiro & Halperin partner Phil Russotti settled the case during jury selection for \$3,300,000. This was a case brought by a 43-year-old front seat belted passenger who

had been picked up at her cleaning job by her sister. The collision occurred on Broadway in Manhattan and there were two southbound travel lanes as well as parking lanes on either side. The plaintiff contended that the defendant truck driver negligently steered from the left lane into the right lane, causing the accident. To prove this, we relied upon rubber tire markings that were on the host automobile and the absence of metal on

metal gouge marks. The plaintiff maintained that the host car then traveled out of control, rotated around to become perpendicular to the front of truck and was struck again by the truck. It was this second impact of metal on metal that left dents on the host vehicle. The defendant trucker denied that the plaintiff's claims were accurate and contended that the host driver caused the collision by cutting him off as she was trying to move to the left lane in anticipation of an upcoming left turn. The host driver, who had \$100,000 in insurance coverage, was also sued. The host automobile had rubber markings that ran from host's driver's side door to the back of the car. The plaintiff's accident reconstruction expert, a former NASA scientist who helped design the lunar landing module, contended the rubber marks could only have been made by the

truck's tire when the truck was steered to the right and the leading edge of the right front of the tire impacted the car. The plaintiff's expert indicated that the metal indentation marks in 3 locations on the side of the car were produced by the truck when it struck the car a second time. This physical evidence proved the plaintiff's testimony of multiple impacts that commenced when the truck drifted into the right lane and struck the host automobile, causing it to spin out of control. The plaintiff's accident reconstruction expert related that he conducted testing in the 1990s which had dynamics that were identical to that involved in the subject case. Films of the testing would have played if the case had proceeded to trial. We asserted that our expert's credentials rendered him unimpeachable.

The plaintiff contended that she suffered an aggravation of a previously sustained lumbar herniation and a tear of the left, non-dominant rotator cuff tear. The plaintiff asserted that because of the pain and limitations attendant to the injuries, she will be permanently precluded from returning to cleaning work. Plaintiff had sustained a lumbar herniation in a work-related incident in the late 1990s that was treated with conservative care, including physical therapy. She related that except for a short period of exacerbation approximately eight years before the subject accident, during which she also underwent conservative treatment, she had been essentially asymptomatic and had been able to work until the collision with the truck occurred. The plaintiff maintained that because of the severe pain caused by the aggravation, she required a lumbar fusion.

The case settled during jury selection for \$3,300,000.

AUTOMOBILE ACCIDENT \$1.2 MILLION VERDICT



Wingate, Russotti, Shapiro and Halperin associate **Nicole Michelle Gill** obtained a verdict of \$1,200,000 for a 48 year old woman who was struck by a van as she was crossing the street within

the crosswalk. Our client suffered multiple fractures and contusions to her feet, a torn ankle ligament and lumbar herniation, which required surgical fusion.

This was a significant victory because Nicole had to try the case twice. The first two week trial resulted in a defense verdict, but Nicole successfully moved to set it aside as against the weight of the evidence. It took a bitterly fought five week second trial to obtain the verdict.

Our client testified that as she began crossing at the light, she observed the defendant in the opposite direction, waiting at the intersection before turning left. After the light turned yellow, the defendant turned and was driving behind her when his van initially brushed against her back. When our client turned around, the van's wheels ran over her feet causing her to fall. The defendant claimed that he did not see our client before impact, and that his van did not run over our client's feet. The defendant further denied that the accident caused the claimed injuries, and maintained that they could well have been related to Lupus, a condition suffered by our client. Nicole proved through the testimony of medical experts that our client's injuries were a direct result of this incident, which was supported by the fact that she had no prior symptoms or treatment that would be consistent with the defendant's contentions.

SETTLEMENTS & VERDICTS

MOTOR VEHICLE ACCIDENT \$2.9 MILLION SETTLEMENT



Wingate, Russotti, Shapiro and Halperin attorneys Tom Oliva and Joseph Stoduto obtained a \$2,900,000 settlement at mediation for a client who was hit by an Access-A-Ride van. Our client, a young woman working in the finance industry, was crossing an avenue in the Meatpacking District with the light in her favor when she was hit in the crosswalk.

Despite being treated and released from Bellevue Hospital that day, it was later determined that she suffered bulges to the discs in her neck, a herniated disc in her lower back and injuries to her left elbow which required arthroscopic surgery to repair torn ligaments. As a result of her spinal injuries, she ultimately underwent cervical and lumbar disc replacement instead of fusion surgery. During the pre trial litigation **Joseph Stoduto** obtained summary judgment on the issue of liability against the driver defendant.

MOTOR VEHICLE ACCIDENT \$2 MILLION RECOVERY



Wingate, Russotti, Shapiro and Halperin partner Cliff Shapiro obtained a recovery for a 32 year old male who was in the course of his employment with Access-A-Ride. Our client was stopped at a

red light when defendants' motor vehicle, a flatbed tractor trailer, backed into the minibus with such impact that the entire bus was pushed to the side. As a result of the accident, our client sustained numerous injuries, including but not

limited to the necessity to undergo a cervical discectomy and cervical fusion at C4-C5, C5-C6.

We were granted summary judgment on liability. A mediation was held where defendants offered \$225,000. Needless to say, we did not accept their offer.

After further negotiations, Cliff was able to procure a \$2,000,000 offer of settlement, which the client accepted.

MOTOR VEHICLE ACCIDENT \$1.5 MILLION SETTLEMENT



Wingate, Russotti, Shapiro and Halperin attorney Robert J. Bellinson settled a case against the City of New York on behalf of our client, a 55 year old woman who was working for many years as a

teacher's aide. While stopped in traffic she was struck by a NYC tow truck that backed up into the front of her stopped car. She immediately felt back pain and went to a medical clinic for treatment that day. Her back pain got increasingly worse and ultimately revealed injuries to her lumbar spine. After conservative treatment didn't help, she underwent a percutaneous discectomy procedure about one year after the accident. Although the surgery relieved her symptoms temporarily, within months her back pain returned and worsened. She then underwent spinal fusion surgery in the summer of 2012.

Right before jury selection, the defendant hired a biomechanical engineer who opined that the accident was so insignificant that it could not have caused the spinal injuries. Thereafter, we retained a biomechanical engineer who was

prepared to testify that the forces produced by the collision, along with the wear and tear existing on a 55 year old woman, could indeed cause the spinal injuries sustained by our client.

On the day of the trial there was a settlement offer of \$75,000; by the end of the presentation of evidence in our case, which included calling both of her spinal surgeons, the case settled for \$1,500,000.

PEDESTRIAN KNOCKDOWN \$1.5 MILLION RECOVERY



Our client, a 63 year old home health worker, was injured while walking in a cross-walk in the Bronx when she was struck by a city vehicle. As a result of the accident, she suffered a fractured orbital bone as well as soft tissue injuries to her back, knee and shoulder, requiring surgery and the loss of three months of work.

Wingate, Russotti, Shapiro & Halperin associate **Adam J. Roth**, prior to depositions, moved for and was granted summary judgment on the issue of liability. The City's defense, that the driver was distracted by sun in his eyes, was not sufficient to defeat summary judgment.

Prior to discovery being completed, **Cliff Shapiro** began negotiating with the City. The City initially offered \$250,000 to settle the case. However, using his expert negotiating skills and due to our firm's reputation and willingness to go to trial, Cliff was able to leverage an additional \$1.25 million dollars while the case was still three years away from trial. Our client currently works full-time as a home health aide.

MOTOR VEHICLE ACCIDENT \$1.45 MILLION SETTLEMENT



Wingate, Russotti, Shapiro and Halperin attorneys **Tom Oliva** and **Joseph Stoduto** obtained a settlement on behalf of a 35 year old working mother, who was injured when a commercial van backed out of a driveway, ramming the car she was driving on the passenger side. Her car was forced into the left lane, where it was then side swiped by a garbage truck which took off her front bumper. Our client never went to the hospital, but instead went to a physical therapy clinic to treat her injuries of neck and shoulder pain. After several months of physical therapy offered no relief, she went to a pain management doctor who gave her 2 epidural shots in her neck, which gave her only temporary relief.

She had two nerve block treatments which were unsuccessful. She then underwent a radiofrequency nerve ablation where the nerves causing pain are burned out using radio frequencies. Unfortunately, this still did not alleviate her pain. Finally, two years later, she underwent cervical neck fusion surgery. During this time our client remained at work, ran and worked out at her local gym.

During the discovery phase **Joseph Stoduto** moved for summary judgment which was granted against the commercial van company. The trial would have only dealt with damages and Tom settled the case during jury selection in the amount of \$1.45 million.

PREMISES

STRUCK BY FALLING WALL FAÇADE \$940,000 RECOVERY



Wingate, Russotti, Shapiro and Halperin attorneys Clifford Shapiro and Victor Goldblum obtained a settlement for our 27 year old client who contended that as he was entering the building in which he resided, a piece of the concrete facade dislodged and struck him in the head. The plaintiff contended that as a result, he suffered herniations and bulges

at four cervical levels, that there was cervical cord impingement and that he required multi-level spinal fusion surgery.

Since the building was less than six stories tall, the defendant was not required by the Administrative Code to have an engineer periodically inspect it. But the plaintiff's expert engineer would have maintained that the facade would have probably exhibited cracks before the portion fell, and the plaintiff contended that a proper inspection would have disclosed the hazard.

The defendant denied having any notice of the defective condition, and contended that the 3in x 3in x 1in piece of concrete was too light to have caused the claimed injuries. The plaintiff countered that the cervical injuries were diagnosed shortly after the incident, and in view of his age of 27 and the absence of any history of prior cervical treatment or symptoms, the only probable explanation for the injury was being struck by the piece of concrete that fell from the facade.

The case settled prior to trial for \$940,000 of the \$1 million available insurance coverage.

TRIP AND FALL \$750,000 RECOVERY FOR MILD TBI



Michael Fitzpatrick obtained a \$750,000 recovery for a 69 year old Greek immigrant who tripped and fell due to a raised cellar door lock hinge. The plaintiff caught his foot on the exposed hinge and fell head

first into the corner of the defendant's building, requiring 45 stitches and 13 staples in his head to close the wound. He missed three months of work as a tailor following the accident. Our claim was that the client suffered a mild traumatic brain injury. The defendant contested the TBI claim and their neuropsychological testing found no TBI but instead malingering. Plaintiff was able to return to work as a tailor of fine clothing and the defense claimed this proved he was not seriously injured. However, Michael deposed a co-worker who testified that plaintiff required far more time to perform his work and was not the same after the accident. This effort resulted in Michael being able to settle this case at mediation for \$750,000.

SLIP AND FALL \$700,000 RECOVERY



Our client, a home health aide in her early 60s, contended that as she was walking in the defendant's fish and vegetable market she slipped and fell on a piece of wet cabbage.

The plaintiff contended that she observed produce leaves on the floor when she entered approximately five to ten minutes earlier, and slipped on one when she was trying to avoid boxes on the floor in the produce aisle.

The plaintiff suffered a lumbar herniation that was confirmed by MRI and which ultimately necessitated fusion surgery, and a torn medial meniscus which required arthroscopic surgery, in addition to undergoing surgery for a fractured metatarsal. Our client maintained that she will suffer extensive permanent pain and weakness and can no longer work.

The defendant argued on the issue of credibility that the jury should consider that the plaintiff was litigious in nature and stopped at her initial attorney's office on her way home from the hospital. Defendant further contended that her lumbar surgery was unnecessary and her lumbar and knee injuries were degenerative in nature. **Wingate, Russotti, Shapiro and Halperin partner William Hepner** settled the case for \$700,000 at a mediation.

SLIP AND FALL \$700,000 RECOVERY



At pretrial mediation, **Wingate, Russotti, Shapiro and Halperin attorney Victor Goldblum**, obtained a settlement for our client, a 63 year old woman who slipped and fell as a result of stepping on a shoe box left in an aisle in a department store. As a result of the fall, our client suffered a shoulder tear and had shoulder replacement surgery. The defendant argued that the fall was not caused by negligence, but rather by physical issues caused by the plaintiff's Parkinson's disease. After a lengthy mediation, the case was settled for \$700,000.

F.E.L.A.

RAIL ROAD ACCIDENT \$1.5 MILLION SETTLEMENT



Wingate, Russotti, Shapiro and Halperin partner Bill Hepner settled this matter at the second mediation of this case, five days before he was to begin trial.

Plaintiff was a track worker for a major rail road. He fell off of a stationary flat car while walking on stacked wood timbers. It was alleged that the timbers had a chemical sealer called creosote on them, which created a slippery condition for plaintiff, and the rail road did not offer proper protection for its worker. Defendant alleged that plaintiff let go of the boom of the crane he was using as a hand hold to walk across the timbers thus causing the accident himself.

Plaintiff died one year after the accident due to complications from kidney disease. Bill successfully argued under the F.E.L.A. statute that the accident was a cause of his death. This was particularly helpful in this case because the plaintiff was in such a condition after the accident that he could not be deposed to give his rendition of the accident under oath. The defendant was relying on a post accident interview with the plaintiff to blame the whole occurrence on the plaintiff, and on one witness who said the plaintiff admitted to letting go of the crane. Through extensive depositions of plaintiff's co-workers and the use of an expert, Bill was able to effectively argue that defendant had a significant chance of losing liability at trial, and that the alleged admission by the plaintiff that he let go of the

SETTLEMENTS & VERDICTS

crane claimed to have been heard by a witness would prove to be incredible at trial.

Plaintiff sustained a number of fractures in the fall. Due in large part to a severe underlying and pre-existing kidney problem, plaintiff developed complications in the hospital which led him to go into a coma, from which he came out of but was never the same. Bill was able to convince the defendant that a jury would believe that plaintiff's prior condition was made significantly worse as a result of the accident and played a part in causing plaintiff's death. Bill argued that kidney disease and underlying diabetes did not cause his death,

but that the fall led to an acceleration and worsening of his condition which contributed to his death.

The sole beneficiary of the plaintiff's estate was his son, who was five years old at the time of the accident and did not live with his father. Bill argued that there should be a significant recovery for the loss of guidance plaintiff's son would suffer without his father's presence. The case settled at mediation for \$1.5 million.

NEW ASSOCIATES

ERIC HORN



Eric Horn joined the firm in 2015 as an associate. He currently handles pretrial litigation in construction accident matters. Eric's responsibilities also include case management in a wide variety of cases in the areas of general negligence, automobile liability and premises liability. Prior to joining WRSH, Eric practiced in the field of plaintiff personal injury law and litigated numerous cases to both trial and settlement. Eric has practiced for approximately 16 years in New York City.

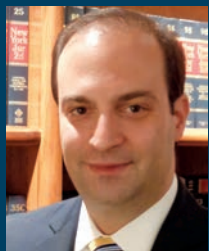
Eric was born in New York City and raised in neighboring Rockland County, New York. He graduated from Lehigh University in 1994 with a major in history and minor in political science. Eric's undergraduate studies were distinguished by Dean's List distinction for academic achievement. He also graduated from Western New England College School of Law in 1997 where he was a member/editor on the law review. Eric was admitted to practice in New York in 1999.

Eric is currently a member of the New York State Trial Lawyers Association and Association of the Bar of the City of New York. Eric currently resides in New Jersey with his wife and son.

NEW ASSOCIATES

Continued

PAUL CORDELLA



Paul Cordella joined Wingate, Russotti, Shapiro & Halperin in 2015. He has spent his career representing injured clients in an array of legal matters involving premises liability, automobile accidents, construction accidents, complex product liability, and pharmaceutical litigation.

Paul received his Juris Doctor from New York Law School, where he served as an editor on the law school's *Media Law* and *Policy Bulletin*. He received his Bachelor's degree from Hofstra University.

Paul is admitted to practice law in New York State and the United States District Court for the Southern and Eastern Districts of New York.

OF COUNSEL

FRANK J. LOMBARDO



Attorney **Frank J. Lombardo** began his career in 1987 after graduating from Thomas M. Cooley Law School. Mr. Lombardo has been litigating and trying cases to verdict in the New York and Federal District Courts for over 25 years, specializing in construction and Labor Law cases, insurance coverage litigation and other negligence actions including automobile, premises and products liability. He has successfully briefed and argued appeals in the New York Appellate Division, First and Second Departments, as well as the New York State Court of Appeals. Mr.

Lombardo has been a member of the Brooklyn-Manhattan Trial Lawyers Association for the past 19 years, of which he is the former President.

BRYCE MOSES



Hired by former United States Attorney General Janet Reno, **Bryce Moses** forged his trial skills in Miami, Florida, as a felony prosecutor and conducted many successful trials resulting in the conviction and sentencing of violent criminals. His performance caught the attention of the State Attorney and Circuit Court Judges who described Bryce as a trial attorney whose "...trial skills and preparation not only showed in his success after success in trial, but earned the respect of opposing counsel."

Bryce returned to New York where he continues to fight for victims' rights. He focuses his practice exclusively on representing people seriously injured due to the negligence of others, against municipalities and corporate defendants resulting in multi-million dollar verdicts and settlements.

Bryce's results have earned him the privilege, at the request of the New York State Bar Association, to lecture hundreds of practicing New York lawyers on winning trial techniques. His clients enjoy a wonderful trial success rate that provides them well deserved results. He has conducted trials in every borough of New York City, and is admitted to practice law in the states of New York and Florida.

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- Construction Accidents
- Medical Malpractice
- Premises Liability
- Products Liability
- Motor Vehicle Accidents
- Wrongful Death
- Birth Injuries
- Brain Injuries

OUR TEAM

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Kenneth J. Halperin
William P. Hepner
Jason M. Rubin
Mitchell R. Kahn

*William A. Wingate
(1927 – 2009)*

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