

# UPDATE

2018 NEWSLETTER

## MOTOR VEHICLE ACCIDENT

**\$8,300,000** JUDGMENT FOLLOWING JURY TRIAL

Partner **Bryce Moses** obtained a \$5,500,000 verdict for our client who was exiting the Staten Island Expressway when her motor vehicle was struck by a Con Edison van. As a result of the impact, the left side of her face hit the steering wheel, her neck twisted, and she felt immediate pain in her neck which caused a herniated disk requiring fusion surgery with plate and screws. Through the efforts of WRSH partner **Ken Halperin**, prior to trial we obtained Summary Judgment on the issue of liability which resulted in added interest in excess of \$2,000,000.

Despite being found responsible for the accident, Con Edison refused to settle the case and took a “no pay” position at trial. Con Edison had two lawyers and three Con Edison investigators assisting their lawyers throughout the damages trial.

Con Edison argued at trial that despite her neck pain, our client neither went to the hospital nor saw any doctors on the day of her accident. Con Edison emphasized that rather than see a doctor, our client



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## BELOW IS A SAMPLING OF SOME OF THE CASES WE HAVE HANDLED:

### **\$18 Million Verdict**

Construction Accident:  
Labor Law

### **\$8.2 Million Recovery**

Construction Accident:  
Worker Paralyzed in Fall

### **\$4.5 Million Verdict**

Emotional Injuries Caused by  
Baby's Death

### **\$17.5 Million Verdict**

Police Brutality:  
Police Shooting Victim

### **\$7.25 Million Recovery**

Construction Accident:  
Scaffold Defect

### **\$4.5 Million Recovery**

Medical Malpractice:  
Failure to Diagnose

### **\$16 Million Recovery**

Medical Malpractice:  
Baby Brain Damage; 2 Cases

### **\$6.6 Million Recovery**

Medical Malpractice:  
Spinal Surgery

### **\$4.27 Million Recovery**

Construction Accident:  
Worker Paralyzed in Fall

### **\$12.085 Million Recovery**

Medical Malpractice:  
Failure to Timely Deliver an Infant

### **\$6.2 Million Recovery**

Medical Malpractice:  
Surgical Error

### **\$4.25 Million Recovery**

Medical Malpractice:  
Medication Error

### **\$11.1 Million Verdict**

Construction Accident:  
Traumatic Brain Damage

### **\$6.15 Million Recovery**

Medical Malpractice:  
Doctor Negligence

### **\$4 Million Recovery**

Construction Accident:  
Brain Injury

### **\$10.7 Million Verdict**

Premises Liability:  
Injured in a Fall Down Flight of Stairs

### **\$6 Million Recovery**

Medical Malpractice:  
Birth Injury; Brain Damage

### **\$3.9 Million Recovery**

Obstetrical Malpractice:  
Birth Injury

### **\$10.7 Million Recovery**

Medical Malpractice:  
Delayed Treatment

### **\$5.5 Million Recovery**

Motor Vehicle Accident:  
Hit by Con Edison Van

### **\$3.75 Million Recovery**

Construction Accident:  
Bricklayer Injury

### **\$10.2 Million Recovery**

Medical Malpractice:  
Infant Brain Damage

### **\$5 Million Recovery**

Construction Accident:  
Wrongful Death

### **\$3.75 Million Recovery**

Medical Malpractice:  
Disabled Twin

### **\$10 Million Recovery**

Birth Injury

### **\$4.9 Million Recovery**

Motor Accident: Pedestrian Injured

### **\$3.5 Million Recovery**

Motor Vehicle Accident:  
Run Over  
By Garbage Truck

### **\$8.5 Million Verdict**

Medical Malpractice:  
Stroke Victim

### **\$4.75 Million Recovery**

Brain Damaged Infant

# CHARITY EFFORTS

## WINGATE, RUSSOTTI, SHAPIRO & HALPERIN'S CANCER SURVIVORS HOST FUNDRAISER FOR MEMORIAL SLOAN KETTERING WHICH RAISED \$150,000



**Doreen Richardson**  
*Breast Cancer*

**Oksana Tarasova**  
*Tonsillar Cancer*

**Phil Russotti**  
*Prostate Cancer*

**Monique Beatty**  
*Lung Cancer*

3

This past year WRSH, together with another law firm, hosted a cocktail party fundraiser for Memorial Sloan Kettering cancer research. The event was attended by approximately 100 people and we raised in excess of \$150,000 for the research program run by Dr. Neil Rosen. Dr. Rosen explained the most current research projects, particularly in the area of immunotherapy for a number of different kinds of cancer and the successes they have achieved.

WRSH cancer survivor **Phil** emceed the event and paralegals **Doreen Richardson**, **Oksana Tarasova** and **Monique Beatty** spoke to the attendees and shared their experiences with fighting cancer and how important it was to continue support for the research into a cure for cancer.



WRSH partner **Frank Lombardo** is extremely active in fundraising for children's charitable organizations. Frank is on the Executive Board of Directors of The New York SportsScene Children's Foundation, a 501 (c)(3) not-for-profit charity which helps to benefit and improve the lives of medically frail, terminally ill or socially disadvantaged children.

Frank is also Special Legal Consultant to YES WE CARE, a not-for-profit charitable organization designed to help improve the quality of life for our Veterans, children with cancer or life threatening ailments, the homeless, and all of those who feel 'forgotten.'

Frank is also active with many other charities, too numerous to mention, where he raises money for children's medical issues.

## MOTOR VEHICLE ACCIDENT

**\$8,300,000** JUDGMENT FOLLOWING JURY TRIAL *continues from cover*

left for Jamaica the next day on a family vacation for two weeks. Although she testified that her neck was in pain the entire time she was away, she saw a nurse at her hotel, and had an x-ray at a local medical facility, none of these records could be located. Con Edison also argued our client was not injured as a result of this accident but due to a prior car accident.

In 2008, our client was involved in a car accident in which her car spun around and was totaled. As a result of that 2008 crash, our client lost consciousness and complained of neck pain at the hospital where she had a CT scan of her cervical spine. She came under the care of a doctor in 2008 who noted that our client had neck pain and diagnosed her with acute traumatic cervical radiculitis. Con Edison argued that the 2008 accident was the cause of her fusion surgery.

Bryce was able to demonstrate through his use of our client's 2008 medical records, MRI films, and her medical treatment from the 2010 accident, that Con Edison was responsible for our client's

C5-6 disc herniation and the fusion surgery necessary to repair it. Bryce showed the jury that our client's neck complaints in 2008 involved only her neck with no radiating pain down into her arms. However, a complaint of radiating pain in 2010 indicated that the C5-6 disc was now herniated and compressing the spinal nerve root. Without any complaint of radiating pain in 2008, our client's spinal surgeon explained that our client did not suffer a herniated disc that compressed her spinal nerves at that time. Bryce argued that our client's medical records from 2010 where she complained of neck pain radiating into both arms indicated a herniation. This was one of the most compelling pieces of medical evidence that convinced the jury it was the Con Ed accident that was responsible for our client's injuries.

The jury deliberated for only 20 minutes. The jury unanimously awarded our client \$1,500,000 for her past pain and suffering and \$4,000,000 for her future pain and suffering.

# WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP

## A FULL SERVICE PERSONAL INJURY FIRM

WRSH is dedicated to the representation of individuals seriously injured as a result of negligence. WRSH has the capacity, skills, resources and talent to successfully handle the most complex cases in every area of personal injury practice including motor vehicle accidents involving automobiles, buses, trucks, and trains; premises liability involving stores, stairwells, public areas, residential and commercial owners and managers, and municipalities which own property; construction litigation involving all areas of the construction industry from laborers to crane operators and everything in between; medical malpractice including every type of medical specialty from obstetrics to neurosurgery; and product liability involving commercial products, workplace products and faulty medical devices. In addition to every attorney being capable of trying his/her cases, we handle our own appeals. We are a full service personal injury firm.

# MOTOR VEHICLE LITIGATION

## BUS ACCIDENT \$2,430,000 VERDICT



**Robert Bellinson** obtained a verdict in the amount of \$2,430,000 on behalf of a 25-year-old nursing student from the Bronx. The woman was driving her vehicle in the Bronx when a New York City Transit Authority bus struck her vehicle, causing a serious collision. As a result of the accident, our client suffered injuries to her lower back, requiring laminectomy surgery. Prior to trial, **Joseph**

**Stoduto** won a decision from the Court that the defendants were 100% responsible for the collision.

The defendant took the position that our client's damages were minimal, and they refused to make a settlement offer. The defendant fiercely contested the claimed injuries. At the conclusion of the trial, the jury awarded our client the total sum of \$2,430,000 for her damages. The verdict is on appeal.

## AUTOMOBILE ACCIDENT \$1,116,452 VERDICT



**Frank J. Lombardo** obtained a verdict in the amount of \$1,116,451 for a 37-year-old man who was knocked down by a bus while crossing a street. Plaintiff, a Local 1 Stage Hand, was attempting to cross 42nd Street at 9th Avenue when a New York City Transit Authority bus struck him causing fractures to his face and left shoulder. Frank proved that the bus was traveling at an excessive rate of speed and that the driver

failed to see the plaintiff while he was in the cross walk. Defendant alleged that plaintiff was crossing the street against the traffic light and at the time of impact was in the bus's lane. Frank's cross examination of the driver eliciting his prior inconsistent statements convinced the jury the driver was unbelievable.

Regarding damages, the plaintiff sustained orbital wall and zygomatic arch fractures requiring open reduction by surgical intervention and a closed reduction of a left greater trochanter fracture requiring arthroscopic debridement of a torn labrum. Despite the defendant's claim that the plaintiff made a great recovery and only lost five months from work, the jury awarded a substantial amount for his injuries.

## MOTORCYCLE ACCIDENT \$1,000,000 RECOVERY & \$5,000,000 VERDICT



**Michael J. Fitzpatrick** recently obtained a \$1,000,000 recovery which was all of the insurance coverage and \$5,000,000 default judgment for a 58-year-old man, who was riding his motorcycle when he was struck by the defendant's vehicle exiting a driveway. The plaintiff suffered multiple fractures which required multiple surgeries and he had confirmed RSD. The plaintiff was forced to undergo multiple lumbar sympathetic nerve blocks, and the implantation of both a temporary and permanent spinal cord stimulator. Mike obtained a \$5,000,000 verdict at inquest against the defaulting commercial property owner for improperly posting a sign which blocked the driver's view. We have started proceedings to recover that judgment and so far have restrained \$500,000 in the defendant's bank account.

# SETTLEMENTS & VERDICTS

## AUTOMOBILE ACCIDENT \$3,000,000 RECOVERY



**Joseph Stoduto and Clifford Shapiro** obtained a mediated settlement in the amount of \$3,000,000 on behalf of a 45-year-old man from Queens. The man was driving his vehicle along a local roadway when another motorist struck his vehicle. As a result of the accident, our client suffered injuries to his neck and lower back which required cervical and lumbar fusion surgery. During the course of the litigation, Joseph obtained summary judgment from the court that the defendants were 100% responsible for the collision. Despite there being no lost wage claim, they obtained a substantial settlement for pain and suffering.



## AUTOMOBILE ACCIDENT \$2,000,000 SETTLEMENT



This matter was settled on the eve of the trial for the full insurance policy limit of \$2,000,000 by **Ken Halperin and Cliff Shapiro** based on **Bill Hepner's** litigation of the case. Plaintiff, who was crossing a large street at 2 a.m., was struck by a driver who left the scene of the accident. The defendant was found by the police at a traffic light a few blocks away, asleep in his vehicle.



The defendant denied that he was involved in the accident, but the police arrested him and ran forensic tests on his vehicle which discovered that paint from his vehicle matched paint found on plaintiff's clothing.

Eventually, the defendant pled guilty to leaving the scene of an accident and driving while intoxicated. There was a serious issue regarding the comparative liability of the plaintiff, whom a witness said was crossing against the light. However, Bill's deposition of the defendant virtually eliminated this defense by casting blame on the driver for not seeing our client.

The plaintiff, who was in his late 20's at the time of the accident, sustained two broken legs, as well as numerous internal injuries, requiring a number of surgeries during his 3 month hospital stay, leaving him with a very large surgical scar in the center of his chest and abdomen. However, despite these injuries, he made a very good recovery and enrolled in a Masters of Business Administration program only a few months after discharge from the hospital. It was for this reason, and the fact that the defendant's insurance company believed that plaintiff's Muslim religion would make a jury unlikely to give plaintiff a substantial verdict in the current political climate, that the company would not make a settlement offer close to the policy limit.

Cliff and Bill formally accused the insurance company of acting in bad faith, and cancelled a planned mediation, assuring the company that our firm would accept nothing less than the full policy amount, and would proceed to trial. Knowing that the case was prepared for trial, and fearing that a jury would award more than the policy, putting its client's assets at risk, the company finally agreed to tender its policy.

## AUTOMOBILE ACCIDENT \$1,925,000 SETTLEMENT DURING TRIAL

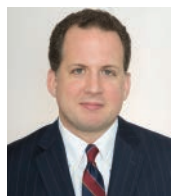


**Nicole Gill** obtained a \$1,925,000 settlement during trial on behalf of a 55-year-old male client who was struck by the defendants' van and knocked to the ground as he stood in the street. His injuries required arthroscopic surgery, as well as cervical and lumbar surgical fusions. At trial, the defendants maintained that the injuries pre-existed the accident given the degenerative condition of the plaintiff's spine and knee. Given the plaintiff's lack of prior symptoms or treatment and the possible exposure the defendants faced, they eventually settled the case. Despite the fact that there were no lost earnings and minimal future medical bills, Nicole obtained this substantial settlement for pain and suffering.

## MOTOR VEHICLE ACCIDENT \$1,850,000 RECOVERY



**Bryce Moses** obtained a settlement for \$1,850,000 on behalf of a 35-year-old grocery store cashier from Queens. The woman was driving her vehicle in Brooklyn when another motorist struck the vehicle, resulting in a serious collision. As a result of the accident, our client suffered injuries to her neck, requiring surgery. During the course of the litigation, **Joseph Stoduto** won a decision from the Court that the defendants were 100% responsible for the collision. The defendants took the position that our client's damages were minimal, and made a settlement offer of only \$100,000, causing Bryce to take the case to trial. After Bryce's opening statement and commencement of testimony, the defendants reconsidered their position, and Bryce successfully negotiated a settlement in the amount of \$1,850,000.



## AUTOMOBILE ACCIDENT \$1,750,000 RECOVERY



**Joseph Stoduto and Cliff Shapiro** were able to obtain a settlement in the amount of \$1,750,000 on behalf of a 37-year-old man from Brooklyn. The man was driving his vehicle along a road in Nassau County when another motorist struck his vehicle. As a result of the accident, our client suffered injuries to his neck and lower back which required surgery. During the course of the litigation, Joseph obtained summary judgment against the defendant. Shortly before the start of trial, Joseph and Cliff attended mediation at which they were able to negotiate a settlement of \$1,750,000.

## BUS ACCIDENT \$1,500,000 SETTLEMENT



**Kenneth J. Halperin and Bryce Moses** recently obtained a \$1,500,000 settlement for a 36-year-old man who was a passenger and was injured when two NYCTA buses collided. Immediately after receiving an answer, Kenneth moved for summary judgment, wherein the Court was asked to hold the NYCTA liable for the accident. While it was obvious that the NYCTA was liable, since two of their buses were involved in the accident, by moving for this relief at the onset of the litigation, interest on any future judgment began immediately.

# SETTLEMENTS & VERDICTS

As a result of the accident, the plaintiff sustained a herniated lumbar disc that required fusion surgery. There were no lost earnings incurred as a result of the accident. The NYCTA argued that this was a low speed collision, and there was virtually no damage to the bus. They argued that plaintiff had pre-existing degeneration in his spine that caused his need for surgery. Shortly after the commencement of the trial, Bryce was able to obtain this very favorable settlement for the plaintiff.

## AUTOMOBILE ACCIDENT \$1,500,000 SETTLEMENT



The matter was settled by **Michael Fitzpatrick and Nicole Gill** for \$1,500,000 at mediation. The plaintiff was a 29-year-old male who was injured when he was the back seat passenger of a car sideswiped by a commercial truck and pushed off of the road into a tree. The plaintiff did not seek medical attention until two weeks following the accident. It was not until four years following the accident, that the plaintiff underwent a lumbar fusion due to continuing and worsening back pain. Despite those issues this substantial settlement was achieved.



## AUTOMOBILE ACCIDENT \$1,400,000 SETTLEMENT



**Nicole Gill** obtained a settlement of \$1,400,000 on behalf of a 36-year-old female client who was injured when her vehicle was struck in the rear by a commercial truck. Our client's vehicle was stopped behind a car at the intersection when the defendant slammed into the rear end of her vehicle, propelling her vehicle into the stopped car in front of her. The defendant driver alleged the accident occurred because our client's vehicle and the vehicle in front of her stopped short. Our client underwent cervical fusion and left knee arthroscopic surgery.

## AUTOMOBILE ACCIDENT \$1,300,000 SETTLEMENT



**Mitchell Kahn** obtained a settlement for \$1,300,000 for an 18-year-old client who was a passenger in a vehicle that sped around a curve too quickly, causing the driver to lose control and sideswipe a utility pole. The plaintiff was a rear seat passenger and was ejected from his seat.

The plaintiff contended that he suffered severe permanent injuries to the right dominant arm, after undergoing several surgical procedures. He also suffered facial injuries, including a left orbital fracture that required surgery.

Mitch settled the case prior to trial for the full amount of the policy limits despite the fact that the defendant had a viable seat belt defense against the plaintiff.

## AUTOMOBILE ACCIDENT \$1,300,000 SETTLEMENT



**Phil Russotti and Brielle C. Goldfaden** obtained a \$1,300,000 settlement after jury selection in a trial against the New York City Fire Department.



Our client, a man in his 30s, was driving to work. He claimed that he reached an intersection controlled by a traffic light which was green for traffic in his direction. As he drove through the intersection in the left lane, a New York City Fire Department truck heading in the opposite direction suddenly turned left in front of our client causing a near head-on collision. The truck turned so suddenly that our client was unable to step on the brake or avoid the crash.

However, the defendants claimed that the accident was our client's fault. The FDNY driver said that our client passed a stopped car and crossed over the double yellow lines, striking the FDNY truck head-on before the truck began to turn left. They also argued that our client ran a red light.

Although our client was wearing his seatbelt, the force of the impact caused multiple discs in his neck to herniate, pressing on his spinal cord. He had emergency fusion surgery to relieve the pressure from his spinal cord and to prevent paralysis.

Despite radical differences in the versions of the accident by the parties and that our young client made a remarkable recovery and was eventually able to return to work, negotiations occurred during the course of jury selection, resulting in a \$1.3 million settlement.

## TRACTOR TRAILER \$895,000 RECOVERY



**Victor Goldblum** recently obtained a \$895,000 recovery for the front seat passenger of a stationary car. The defendant, who was operating a tractor trailer, backed his vehicle into the driver's car that was lawfully stopped behind him. As a result of the impact the plaintiff suffered injuries to her back and right shoulder, which required surgery. The defendants argued that all of the plaintiff's injuries were pre-existing. The defendant had \$950,000 available in insurance coverage. After being assigned to a trial judge, the defendant's attorneys initially offered \$100,000 to settle the case. Victor Goldblum successfully negotiated the case and the matter settled for \$895,000.

# TRAIN LITIGATION

### TRAIN LITIGATION \$1,700,000 SETTLEMENT



**Kenneth Halperin** obtained a substantial \$1,700,000 settlement for a woman who was injured on the Metro-North Spuyten Duyvil Train Derailment of December 2013.

The train operator apparently dozed off while rounding a curve causing the Metro-North train to careen off the tracks injuring numerous passengers. Metro-North accepted responsibility and the case settled prior to trial.

As a result of the accident, plaintiff sustained head and face lacerations that required multiple sutures and left mild scarring on her forehead. The plaintiff also suffered torn ligaments in her knee and a vertebral fracture at C4. The injuries required physical therapy. Plaintiff did not have to undergo any surgery for these injuries, yet Ken obtained this very substantial settlement on her behalf.

# CONSTRUCTION LITIGATION

### PLUMBER'S ACCIDENT \$1,750,000 VERDICT



**Bryce Moses** recently obtained a \$1,750,000 verdict for a 39-year-old non-union plumber who fell approximately six feet from a ladder while he was drilling holes in the ceiling for piping. WRS partner, **Mitchell Kahn**, was able to establish during depositions that the defendants failed to provide the plaintiff with the proper type of ladder/protective device for the type of work being performed.

After discovery, Mitch obtained summary judgment on liability pursuant to Labor Law 240 (1).

The matter proceeded to trial in Kings County. As a result of the accident, plaintiff sustained a hairline fracture to the patella that required arthroscopic surgery, and a herniated disc that required surgery on his lumbar spine.

After the surgeries, plaintiff made an excellent recovery and returned to work without suffering any lost earnings. Despite this, Bryce was able to convince the jury at trial to award \$1,500,000 for pain and suffering and \$250,000 for past and future medical expenses.

## ELECTRICAL WORKER \$2,750,000 RECOVERY



**Clifford Shapiro and Frank J. Lombardo** settled this matter for \$2,750,000 at mediation prior to jury selection. Plaintiff, a 34-year-old man at the time of the accident, was a Local 3 Electrician installing conduit and brackets under the elevated 7 train rails on Roosevelt Avenue between 49th and 50th Streets in Queens, NY. The plaintiff was elevated in the basket of an aerial lift when it was

struck by a ladder rack situated on top of a Long Island Railroad work vehicle driving under it. The sudden impact caused the basket to “sling shot,” which in turn caused the plaintiff to strike the right side of his head on a steel beam and the right side of his body against the bucket.

The plaintiff sustained a partial rotator cuff injury requiring arthroscopic surgical repair. He also sustained mild traumatic brain injury, post-concussion syndrome and post-traumatic stress disorder with cognitive deficit symptoms.

Defendants argued that plaintiff caused the accident by lowering the basket without looking at traffic below. They further argued that he did not sustain a brain injury, and if he had, it was resolved. In addition, the defendants produced video surveillance contradicting plaintiff's claimed physical abilities. The pretrial litigation was handled by **Bill Hepner**.

## SCAFFOLD ACCIDENT, CRANE COLLAPSE \$2,500,000 RECOVERY



**Kenneth J. Halperin** recently obtained a \$2,500,000 settlement for a 40-year-old carpenter who was injured at a construction site. At the time of the accident the injured plaintiff was beginning to descend a scaffold when a crane that was overloaded collapsed and struck the scaffolding. In order to avoid being crushed by the crane the plaintiff had to let go of the scaffold, which caused him to fall approximately fifteen feet to the ground below.

As a result of the accident the plaintiff sustained an injury to his lower back, which required a lumbar spine fusion and a knee injury which required arthroscopic surgery. Although the plaintiff was a union carpenter he failed to work in the union for three of the previous five years and the two years that he did work were for less than 100 hours. Ken was able to buttress his damages claim by retaining an expert witness to determine his future medical costs over his lifetime. Plaintiff made a very good recovery and was in engineering school at the time of the settlement, making the settlement more outstanding.

# SETTLEMENTS & VERDICTS

## PLUMBER'S ACCIDENT \$2,400,000 SETTLEMENT



**Kenneth Halperin and Mitchell Kahn** recently obtained a \$2,400,000 settlement for a 56-year-old non-union plumber who fell approximately ten feet from a ladder while he was working in a building helping to install a new roof drainage system. While plaintiff was descending the ladder it began to tip over causing him to lose his balance and fall. The evidence established that the ladder was old and unsafe and the floor below was also uneven, causing the ladder to be unstable.

During discovery, we were able to establish that the plaintiff was not provided with the proper safety devices, such as a scaffold, scissor lift or safety harness, all of which could have prevented his accident. After discovery, we obtained summary judgment on liability pursuant to Labor Law 240 (1).

As a result of the accident, plaintiff sustained multiple injuries including, a fractured right calcaneus, which required surgery to insert a single screw to reduce the fracture, partial ligament tears in his right ankle that required an arthroscopic surgery and debridement, and a herniated disc in his lumbar spine which required a percutaneous discectomy.

Prior to trial, Ken and Mitch conducted three mediations over a four-month period, which resulted in a settlement of \$2,400,000.

## LABORER'S ACCIDENT \$2,100,000 SETTLEMENT



**Kenneth J. Halperin and Mitchell Kahn** recently obtained a \$2,100,000 settlement for a 57-year-old laborer who was injured at a construction site. The injured plaintiff was walking along the floor of a new building that was under construction. He was bringing materials to another worker. One of the pieces of plywood that was protecting the floor was broken and poorly maintained. As he walked over it, it gave way, causing him to fall to the floor below.

Defendants tried to establish that plaintiff was supposed to be wearing a harness at the time of the accident. However, during the deposition of the defendant contractor, Mitch was able to establish that a harness was not necessary for the work he was doing, and in fact, he would have been unable to do the work if he had a harness limiting his movement. We also retained an engineering expert to strengthen this argument.

As a result of the accident, plaintiff injured his neck and ultimately required a cervical spinal fusion. He also injured his shoulder which required arthroscopic surgery, and sustained a head injury which left him suffering from post-concussion syndrome. The defendants and their examining doctors argued that the shoulder and neck injuries were pre-existing due to his age, and that the head injury and related symptoms were relatively minor. We were able to counter this argument with our own medical experts and thus were able to procure a significant settlement for this worker.

### CARPENTER ACCIDENT \$1,000,000 SETTLEMENT



**David M. Hoffman** obtained a settlement in the amount of \$1,000,000 for a 45-year-old man who was injured in an accident on a construction site. The accident occurred in Queens where a building renovation was taking place. The plaintiff was installing flooring when defective wood broke causing him to fall through the floor to the ground below. As a result of this incident, the plaintiff sustained serious injuries to his neck, back, shoulder, knee and ankle, and required multiple surgeries. The building owner's total insurance coverage was \$1,000,000, and David successfully negotiated a settlement for the entire \$1,000,000.

### TRUCK DRIVER ACCIDENT \$950,000 SETTLEMENT



**Frank J. Lombardo** settled this matter for \$950,000 after unsuccessful mediation, and prior to commencement of jury selection.

On September 9, 2011, the plaintiff sustained serious and permanent injuries at "Ground Zero" and the "Freedom Tower" where demolition and construction of underground utilities, sidewalks, lights and extension of a subway line took place. Plaintiff was operating the boom of a flatbed truck, and after successfully placing I-beams on the flatbed,

he began walking towards the front side of the truck in order to return the remote control which operated the boom. He heard a loud noise, felt a vibration under his feet and the I-beams fell off the truck striking him.

The defendants contended that there was no nearby blasting and/or heavy drilling which would cause the ground to shake or vibrate in any way. However, partner **Mitchell Kahn** was able to establish during depositions that a subcontractor was performing "hoe ramming" in the area adjacent to where the accident occurred, and that "hoe ramming" caused vibrations.

Regarding damages, the plaintiff was taken immediately from the scene by ambulance to Bellevue Hospital Center where he underwent surgical intervention for bilateral open tibia and fibular fractures with degloving injury. The surgery consisted of intramedullary nail fixation of the tibial fractures. The plaintiff returned to work as a truck driver six months after the accident.

## PREMISES LIABILITY

### DAY CARE CENTER \$2,500,000 SETTLEMENT



**Victor Goldblum** settled this case for \$2,500,000 on behalf of an 18-month-old infant, who was severely burned by boiling water while attending daycare. The aides who were in charge of the classroom negligently allowed the infant to be left unattended. While she was alone in the classroom, boiling water spilled on our client's face and left shoulder. The boiling water caused a severe burn on the infant's left shoulder which required skin graft surgery leaving her with a disfiguring scar.

### REPAIRMAN INJURED AT COMMERCIAL PREMISES \$1,500,000 SETTLEMENT



**Nicole Gill** obtained a \$1,500,000 settlement during jury selection on behalf of a 46-year-old man who was injured while on the defendants' premises to fix a security camera. Our client was pushing the defendants' heavy lift machine up a ramp when it fell on him. The defendants appealed the denial of their motion for summary judgment and the Appellate Division held for the Plaintiff and permitted us to prove that the defendant failed to give a proper warning to our client of the dangerous situation our client was engaged in. Defendants permitted and encouraged our client to perform the task. Our client's injuries required multiple surgeries to his right hand, right shoulder, right hip and lumbar spine. **Bill Hepner** handled all litigation prior to trial.

### SIDEWALK TRIP AND FALL AGAINST NYC \$1,250,000 MILLION SETTLEMENT



**Bryce Moses** obtained a \$1,250,000 settlement during trial against New York City for a 57-year-old woman who tripped and fell on broken bluestone in front of the Kings County Courthouse. The City took a "no pay" position and maintained that they had no prior written notice of the broken bluestone that caused our client's accident. The referring attorney was having difficulty finding a firm willing to take on the challenges of this case. When **Phil Russotti** analyzed the case he was able to locate and retain a forensic geologist and together they were able to demonstrate through sample testing of the bluestone that the specific defect existed at the time the City conducted its inspection. Phil's theory proved successful during trial as Bryce was able to persuade the City to offer the settlement.



## SIDEWALK TRIP AND FALL \$1,200,000 MILLION RECOVERY



**Clifford Shapiro and Brielle Goldfaden** recovered \$1,200,000 for a 54-year-old nurse who tripped and fell on an uneven sidewalk next to a nursing home in her neighborhood after dark. Brielle's deposition of a nursing home employee revealed the defect was there for many years and nothing was done to fix it. Our client suffered a herniated disc in her neck which required surgery.

The plaintiff's injuries were complicated by the fact that she had four subsequent accidents at work which the defendant argued were the true cause of her problems. Despite this, we were able to obtain a significant recovery for our client.

## BRAIN INJURY \$1,200,000 SETTLEMENT



**William Hepner** obtained a \$1,200,000 settlement on behalf of a 52-year-old man who was struck in the head by a door which opened into him when entering a bar. Bill successfully argued that the door

and entranceway were negligently designed. The bar door opened out from the building, over two and a half of the four steps that led from the sidewalk to the door. There was no landing, and an expert supported the fact that anyone who walked up the steps was at risk of being struck by the door. Additionally, the door had only a small glass window to see out, which was covered with stickers. The bar owner and building owner argued that the entrance had been in use for many years without incident and that the plaintiff was highly inebriated with a .24 blood alcohol level indicated in his hospital record. This information made him culpable in causing his own accident,

and indicated that he might have simply fallen into the door. Defendants had an expert toxicologist who would have testified to the degree of impairment which would result from this amount of alcohol in his system. Plaintiff denied drinking the amount of alcohol necessary to reach such a blood alcohol level, and testified that he was at a different bar prior, where he had only three drinks in three hours time. That bartender corroborated the plaintiff.

The door struck plaintiff in the forehead with enough force to cause a depressed skull fracture. He was knocked off of the steps, landed on his back, and the back of his head struck the pavement. He suffered a subdural hematoma, and was in a coma for approximately three weeks. Our client suffered a loss of memory regarding the accident, and although no one actually saw the door strike him, the injuries to the front and back of his head were consistent with the mechanism of injury.

The main injury was a traumatic brain injury, which included cognitive difficulties including memory loss, attention deficit, and concentration-reasoning deficits. He also suffered from post-concussion syndrome, vertigo, and double vision. Plaintiff continued to treat for his problems from the time of the accident up to the time of the settlement.

## RESIDENTIAL CEILING COLLAPSE \$1,000,000 SETTLEMENT



**Kenneth Halperin** obtained a settlement in the amount of \$1,000,000, which represented the full limits of the defendant's primary insurance policy, for a 30-year-old woman who was injured when the ceiling in her bathroom collapsed on her head.

The accident in question occurred in plaintiff's bathroom. An ongoing leak that was never repaired left the ceiling damp and weak until it

finally collapsed upon the plaintiff's head when she was in the bathroom. During the course of discovery we also conducted a deposition of the tenant who lived above the plaintiff. She testified that her toilet had been leaking through the floor for several years and the building never addressed the problem. At the conclusion of discovery we were able to obtain summary judgment on the issue of liability.

As a result of the accident plaintiff underwent a

fusion at L5-S1. After a period of physical therapy the plaintiff returned to work and school full time. The defendants produced photographs of her on vacation snorkeling, parasailing, and horseback riding. They argued that she made a complete recovery and was therefore able to do all of the activities that she did before the accident. In order to obtain a significant settlement we countered that although she made a good recovery, she performs the activities in pain.

## MEDICAL MALPRACTICE

### OBSTETRICIAN AND NURSING MALPRACTICE \$6,000,000 SETTLEMENT



**Kathleen Kettles** settled a case for the family of a 4-year-old girl whose mother had both her prenatal care and delivery at Woodhull Hospital Center. The newborn was placed with her mother in what is called a "rooming in" arrangement that is done to promote parent-child bonding. Within 36 hours of her birth, she developed dangerously high levels of bilirubin necessitating a double exchange transfusion. During the procedure the newborn went into cardiorespiratory arrest and suffered an injury to her brain and her kidneys. Kathy identified two main departures from accepted obstetrical practice in that the hospital had ignored a minor blood incompatibility between the mother and her newborn and the nursing staff failed to properly monitor the infant for jaundice.

Now, at age 4, she has chronic kidney disease, cannot eat solids, and attends school for severely developmentally disabled children. The \$6,000,000 settlement will allow the family to provide a better future for their child and for themselves.

### OPHTHALMOLOGY MALPRACTICE \$1,200,000 VERDICT



**Jason Rubin** obtained a \$1,200,000 verdict in a medical malpractice case arising out of vision loss in the eye of a 71-year-old woman. Jason claimed that an ophthalmologist failed to refer plaintiff to a retinal specialist after she had a dramatic loss of visual acuity several days after undergoing cataract surgery. As a result, there was a delay in diagnosing an infection in the eye, known as endophthalmitis, resulting in blindness in the eye. The jury accepted plaintiff's arguments and awarded \$600,000 for past pain and suffering and \$600,000 for future pain and suffering, a substantial verdict in Suffolk County.

### WRONGFUL DEATH \$1,800,000 SETTLEMENT



**Jason Rubin** obtained a \$1,800,000 settlement in a wrongful death case involving the death of a 21-year-old woman resulting from a hospital's failure to timely diagnose and treat postoperative bleeding.

The decedent, an unmarried nursing student without any children, came to the hospital with complaints of upper abdominal pain and vomiting. She underwent a procedure known as an ERCP and, thereafter, her hemoglobin and hematocrit dropped significantly, indicating a possible bleed. However, no blood products or fluid resuscitation were provided to her for approximately 10 hours. As a result, she suffered from hemorrhagic shock and multiple organ failure. After four months of hospitalization and multiple surgical procedures, she passed away. The entire sizable settlement was attributed solely to her pain and suffering.

### WRONGFUL DEATH \$1,500,000 SETTLEMENT



**Kathleen Kettles** settled a wrongful death case for \$1,500,000 for a 32-year-old woman who died prematurely leaving behind her husband and three children.

This was a very difficult case because the decedent suffered from Lupus and due to the necessity for treatment with steroids, she developed severe premature atherosclerosis.

Plaintiff developed severe abdominal pain and went to the Bellevue Hospital Emergency Department. The surgeon determined that her condition did not warrant immediate surgery, but within 16 hours after admission she developed septic shock and they had to perform emergency surgery. Kathy, along with our surgical and critical care experts, determined that not only did they delay surgery, but that they failed to perform serial abdominal examinations and timely prescribe and monitor her anti-coagulation. She consequently died one month after her admission.

Our client left behind her husband, a pastry chef, and three young children. The case was complicated by the fact that due to her Lupus and

complications from drug treatment she would likely have died prematurely. However, we had experts prepared to testify that her life expectancy was at least 10 years which would have been during the most important time in her children's lives, justifying the loss of guidance settlement to her young children.

### MEDICAL MALPRACTICE \$1,000,000 SETTLEMENT



**Jason Rubin** obtained a \$1,000,000 settlement in a medical malpractice action causing a traumatic brain injury suffered as a result of a fall shortly after plaintiff was discharged from a hospital.

Plaintiff, a 57-year-old man, was taken to defendant hospital by ambulance because of complaints of dizziness, near syncope and inability to get out of bed. After an initial evaluation, a decision was made to discharge him and have him worked up as an outpatient. Upon discharge, he was not provided with any assistance or transporter despite the hospital personnel being aware that he had a gait disturbance. While walking toward his car, right in front of the hospital exit door, he lost his balance, fell and struck his head, causing him to suffer a skull fracture and traumatic brain injury. The client died before depositions were even conducted.

At trial, Jason claimed that the discharging nurse was negligent in failing to provide plaintiff a wheelchair and transporter upon discharge, particularly in light of the significant fall risk factors he exhibited. Jason tried the case; however, prior to verdict, the case settled against the hospital for \$700,000. Previously, the matter was settled against plaintiff's attending physician for \$300,000.

## PRODUCTS LIABILITY

### PRODUCTS LIABILITY \$2,500,000 SETTLEMENT



**Jason Rubin** secured a settlement of \$2,500,000 on behalf of a 33-year-old man who was injured as a result of a defective inflatable tube towed behind a boat.

As a result of the product's defect, the plaintiff sustained a severe brachial plexus injury that rendered his dominant arm severely injured.

The plaintiff was using a product known as a Kite Tube, an inflatable tube that was designed to become airborne and fly when towed behind a boat. Plaintiff purchased the product shortly after it went on the market. While he was riding on the Kite Tube for the first time, it suddenly rose approximately 20 feet in the air, became unstable, rotated to the right, and crashed violently into the water, permanently paralyzing his dominant arm. The manufacturer of the product went into bankruptcy, but we were able to obtain a substantial recovery from the product distributors who under NY law are responsible for defective products.

Each distributor moved for dismissal, arguing that plaintiff could not make out a prima facie case of strict products liability against either distributor because we could not prove which distributor supplied the product. Jason opposed this motion and argued that both distributors should be held jointly and severally liable under the doctrine of "alternative liability". Under that doctrine, where the conduct of two or more defendants is tortious, and it is proved that harm has been caused to the plaintiff by only one of them, but there is uncertainty as to which one, the burden is placed on the defendants to prove that they did not cause the harm. The Supreme Court agreed with plaintiff that the alternative liability doctrine was applicable to the case and denied the distributors' motions for summary judgment. The distributors appealed to the Appellate Division and, in a unanimous decision, it affirmed the trial court's order denying summary judgment and held that the alternative liability doctrine was applicable. The case settled after jury selection.

# WRSH STAFF: THE BEST IN THE BUSINESS

Wingate, Russotti, Shapiro & Halperin's success in court could not be accomplished without our terrific staff. They are the backbone of the office and support the attorneys in the most professional, efficient and friendly manner in our industry. Here they are!



19

## FRONT ROW FROM LEFT TO RIGHT:

**Leslie Lugo**  
*Medical Coordinator*

**Yvonne Augusto**  
*Construction Paralegal*

**Doreen Richardson**  
*Medical Records*

**Jeanette Columna**  
*Calendar & Depositions*

**Kathleen Bartolotti**  
*Office Manager*

**Aisha Yetman**  
*Medical Malpractice Paralegal*

**Kimisha Bostick**  
*Case Manager*

**Yina Ramirez**  
*General Negligence Paralegal*

**Sean Brown**  
*Mail, Filing, Scanning*

**Marlo Sullivan**  
*Settlements and Liens*

**Terri Vassallo**  
*Medical Malpractice Paralegal*

**Maribel Caba**  
*General Negligence Paralegal*

**Mercedes Estrada**  
*Construction Paralegal*

**Alex Maldonado**  
*Calendar & Depositions*

**Allison Daly**  
*Marketing Director*

**Joyce Alexander**  
*Calendar & Depositions*

## BACK ROW FROM LEFT TO RIGHT:

**Michelle Ortiz**  
*General Negligence Paralegal*

**Glenda Wilcock**  
*General Negligence Paralegal*

**Shelly Nunez**  
*Receptionist*

**Sherly Antione**  
*Automobile Paralegal*

**Bania Delossantos**  
*Construction Paralegal*

**Joanna Torres**  
*Medical Records*

**Alex Friginette**  
*Mail, Filing, Scanning*

**Monique Beatty**  
*General Negligence Paralegal*

**Zhanna Pishnyuk**  
*Automobile Accidents Paralegal*

**Oksana Tarasova**  
*Construction Paralegal*

**Rafeal Martinez**  
*Accounts Payable*

**Jeselle Soto**  
*Reception*

## NEW ASSOCIATES



### LAUREN PENNISI

Lauren Pennisi joined Wingate, Russotti, Shapiro & Halperin, LLP as a medical malpractice associate in 2017, after being associated with another prestigious personal injury firm in New York City. Lauren brings extensive experience to the firm in wrongful death and medical malpractice claims caused by delays in diagnosing cancer, birth-related neurological injuries, surgical errors and post-operative complications. Lauren has been named by Super Lawyers Magazine as a Rising Star in the field of plaintiff's medical malpractice in 2015, 2016 and 2017.



### ANDREA BORDEN

Andrea is a trial attorney who recently joined the firm after working for another large personal injury law firm in New York City where she was a senior trial attorney. Andrea has over a decade of experience litigating all types of personal injury cases including premises liability, municipal liability, wrongful death and medical malpractice cases in the State and Federal Courts of New York.

20

## NEW OF COUNSEL



### GENNARO BATILORO

Since he became an attorney Gennaro Battiloro has worked tirelessly to innovate the way in which the attorney-client relationship is perceived. His hands-on approach to individualizing each claim and working with each client that he represents has led to the recovery of millions of dollars for his clients. The key to his success is a combination of drive, intense customer service, skilled negotiation, and an intimate knowledge of the medical and legal fields.

Gennaro's reputation within the niche world of workers compensation and construction accident litigation has garnered him not only the respect of his colleagues, but that of past, present and prospective clients. Since he opened his own firm, the Battiloro Law Group, Gennaro has been known for his tireless efforts to understand each client as an individual and not merely as a number. He has successfully won hard-fought trials and appeals for thousands of clients.

Before starting his own successful practice, Gennaro worked for many years within the medical and real estate fields. This experience has helped to give him a unique perspective into the connection between the workers, their injuries and the regulations that intertwine the umbrella of the labor law and workers compensation. By utilizing this technical knowledge and experience Gennaro has been able to formulate individualized litigation plans for each client that walks through his door. This allows each case to stand out when presented to a judge or a jury.

Mr. Battiloro is a 2010 graduate of New York Law School. He is a member of the Injured Workers Bar Association, the Columbian Lawyers Association of Brooklyn, the New York Bar Association, and the Brooklyn Women's Bar Association. Prior to law school, he earned a B.A. in 2007 from Fordham University.



### DAVID HOFFMAN

David joined Wingate, Russotti, Shapiro & Halperin as a trial attorney in 2016, and has been a practicing attorney for more than 24 years in New York City. Prior to joining the firm, David practiced personal injury litigation as a partner at a prominent New York personal injury law firm for 18 years. David specializes in personal injury litigation, and has tried numerous cases to verdict, resulting in large monetary awards for his clients. He has also successfully presented and resolved numerous matters in arbitration and mediation in all areas of civil law. Primarily, he concentrates in the specialized areas of construction and labor law, motor vehicle accidents and premises-related lawsuits. After receiving his undergraduate degree from SUNY Binghamton in 1989, David earned his J.D. degree from Brooklyn Law School in 1992. He is currently a member of the New York State Trial Lawyers Association, American Association for Justice, Jewish Lawyer's Guild and the New York City Bar Association. As a member of the New York City Bar Association, David served as Chairman of the Tort Litigation Committee. David is admitted to practice in the State of New York, Federal Court of New York and the State of New Jersey.



### NOAH KATZ

Noah joined the firm in July of 2016. He is a seasoned civil litigator concentrating his practice on representing catastrophically injured individuals as a consequence of motor vehicle and trucking accidents, construction accidents, and product defects. Prior to joining Wingate, Russotti, Shapiro, & Halperin, LLP, Noah represented corporations and insurance companies in a Manhattan-based defense law firm for more than 10 years. Through this experience, Noah gained an insight and understanding as to how the insurance industry and its clients evaluate and ultimately litigate personal injury claims. His background has provided him with a unique perspective that enables him to aggressively and effectively pursue personal injury claims on behalf of his clients. Noah consistently delivers top results using a unique combination of both efficiency and expertise, sustaining the confidence of our clients that they are getting the highest quality legal representation available.

21



### DOUGLAS MILCH

In the past decade, Doug has handled some of the largest personal injury matters in the State of New York. Douglas has used his considerable legal talents to obtain settlements totaling over \$80 million. Douglas handles a variety of matters, including cases involving construction site accidents, train disasters and premises liability.

A cum laude graduate of New York Law School, Douglas attended the University of Rochester, and has a degree in history from George Washington University. He is a member of the bar of the State of New York, and is admitted to practice before the United States District Courts for the Southern and Eastern Districts of New York.

# NEW PARTNERS



## BRYCE MOSES

Bryce merged his prior firm Friedman and Moses with WRS in 2016. Bryce is responsible for trying many of the most significant personal injury cases we have. Bryce is frequently asked to lecture practicing attorneys on trial practice and evidence. For the past five years Bryce has had the privilege of speaking before judges on recent developments in the law.



## KATHLEEN KETTLES

Kathy is in charge of the medical malpractice department where she reviews cases on intake and takes depositions on the most complicated cases. She specializes in birth injury cases which are typically some of the most significant cases in the office.



## FRANK LOMBARDO

Frank joined the firm after practicing for years on the defensive side of construction litigation. He brings a wealth of knowledge and experience to the prosecution of those claims on behalf of injured workers.



## NICOLE M. GILL

Nicole is one of our leading trial attorneys who tries some of the most complicated cases in the office. She previously tried cases for the City of New York in their Torts division where she was one of their most prolific trial attorneys.



## VICTOR GOLDBLUM

Victor merged his solo personal injury practice with WRS and has seamlessly integrated himself into handling a significant case load together with trying serious personal injury cases.



## JOSEPH STODUTO

Joseph handles exclusively automobile litigation and is an expert in this area of the law. He is skilled at developing sufficient facts during discovery to enable him to obtain summary judgment on liability in numerous cases. Joseph also successfully handles the appeals on his cases.



We handle all of our own appeals and many of our lawyers have successfully written the briefs and argued the appeal of their cases including **David Schwarz**, **Bill Hepner**, **Jason Rubin**, **Victor Goldblum**, **Kathy Kettles**, **Philip Russotti**, and **Joseph Stoduto**. In addition, **David Schwarz** exclusively handles appeals.

This past year **David** successfully helped solidify law in the state on an important issue, namely to what extent should the court take away from the jury the issue of whether a defect was trivial due to its size, location and other characteristics. **David** defeated a defendant's motion for summary judgment through the appellate court and reversed finding our defect "trivial" as a matter of law. **David** had to file for permission from the Court of Appeals to take the case, which he convinced them to do. Then he successfully argued before the Court and got it to review the appellate division and send the case back for trial. The case is significant because it clarified the law by shifting the burden of proof onto the defense to show that a defect was not just physically insignificant but also that it was not dangerous due to the characteristics of the defect and the surrounding circumstances, showing that it did not increase the risk of injury it posed.



23

**David** also successfully convinced the appellate division that a trial court decision permitting a trial was correct in a case where a catering establishment allowed a third party to enter their premises and erect a flower display. The flower company was defunct and **David** successfully convinced the appellate court that there was a question of fact about whether the catering company was responsible for the actions of the flower company when the display fell on our client's head, by not properly inspecting the arrangement prior to having guests come onto the property.

**Jason Rubin** successfully convinced the appellate division in a complex products liability case that two distributors have equal liability for an injury even though it was unknown which placed the product into the stream of commerce. He successfully utilized the alternative liability doctrine.

# WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP

The Graybar Building  
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## NEWSLETTER

WINGATE, RUSSOTTI, SHAPIRO & HALPERIN, LLP

### PRACTICE AREAS

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

### OUR TEAM

#### PARTNERS

Philip A. Russotti  
Clifford H. Shapiro  
Kenneth J. Halperin  
I. Bryce Moses  
Kathleen P. Kettles  
William P. Hepner  
Jason M. Rubin  
Joseph P. Stoduto  
Mitchell R. Kahn  
Victor Goldblum  
Frank J. Lombardo  
Nicole M. Gill

#### ASSOCIATES

Michael J. Fitzpatrick  
Brielle C. Goldfaden  
Eric L. Horn  
Paul R. Cordella  
Lauren Pennisi  
Andrea Borden

#### OF COUNSEL

Paula M. Greco  
Robert J. Bellinson  
Douglas A. Milch  
David M. Hoffman  
Noah Katz  
David M. Schwarz  
Enrique O. Guerrero  
Gennaro Battiloro

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*William A. Wingate*  
(1927 – 2009)