



Alan B. Friedberg

Senior Counsel

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Alan Friedberg is a veteran trial lawyer and former prosecutor who has tried numerous civil and criminal cases during his career. In his current role, Alan defends hospitals and health care providers against the full range of medical malpractice claims brought in New York state and federal courts.

As counsel to major hospitals in Bronx County and throughout the New York metropolitan area, Alan has defended obstetricians, neurosurgeons, plastic surgeons and a myriad of other providers in complex, high-exposure cases. While his current practice focuses in the medical malpractice area, Alan has extensive experience defending at trial manufacturers and ski area operators in product and general liability claims.

Alan frequently has presented in-service and continuing medical education (CME) programs to residents, interns and other health care professionals on medical malpractice claims handling and risk management. For a large medical malpractice insurance carrier, Alan and his team produced a CME program, including a video and supporting materials, that is now required viewing by the client's insured doctors in order to renew their policies.

From 1977-1984, Alan worked as an assistant district attorney, senior assistant district attorney and career criminal prosecutor in the Rockland County, NY, District Attorney's office.

Professional/Community Activities

For more than 20 years, Alan has been an active member of the Bronx County Bar Association (BCBA) and has held various leadership positions with this organization and its separate charitable arm. He is a senior member of the board of directors and served as its president in 2005. He also is a member of the BCBA Civil Courts Committee, which regularly meets with the administrative judge to discuss issues involving the operation of the Bronx courts. On the charitable side, Alan has served as president of the BCBA

Services

- Medical Malpractice & Health Care
- Government Investigations

Endowment Corporation since 2009 and chairs its Scholarship Committee.

Education

- Albany Law School (J.D., 1977)
- University at Albany (B.A., 1973)
 - cum laude

Bar Admissions

- New York

Court Admissions

- U.S. District Court, Southern District of New York
- U.S. District Court, Eastern District of New York
- U.S. District Court, Northern District of New York

Professional Affiliations

- New York State Bar Association, House of Delegates
- Bronx County Bar Association: senior member and past president, Board of Directors; chair, Endowment Corporation; chair, Scholarship Committee; member, Courts Committee

Awards & Honors

- Selected for inclusion in *The Best Lawyers in America*®, 2023-2026
- Selected for inclusion in *New York Super Lawyers*, 2010-2019
- Franklin Williams Diversity Award, New York State Office of Court Administration, 2005

Client Wins

Peticca and Friedberg Win Summary Judgment Dismissal of Med Mal Case with Workers' Compensation Defense

Christopher Peticca (Associate-White Plains, NY) and Alan Friedberg (Senior Counsel-White Plains, NY) obtained summary judgment in New York State Supreme Court, Bronx County, securing dismissal of a medical malpractice action against Wilson Elser's clients, an orthopedic surgeon and his practice. The plaintiff, who sustained a workplace injury years earlier, underwent more than six years of treatment under workers' compensation coverage before undergoing a total knee replacement performed by our clients. She alleged that the surgery was negligently performed, claiming the components were oversized and improperly aligned. In moving for summary judgment, Chris and Alan argued that the surgery was performed in accordance with the standard of care and that recovery was barred under Workers' Compensation Law § 11, as the plaintiff had already been compensated for the same injuries.

In opposition, the plaintiff submitted an expert affirmation challenging the size and alignment of the knee replacement components, as well as case law in support of her position that her workers' compensation claims did not bar the malpractice action because the subject knee replacement surgery caused her additional harm. On reply, Chris and Alan prevailed on both arguments, demonstrating that subsequent treatment records and radiological films confirmed the components were properly aligned and installed, and that the plaintiff's expert ignored material evidence in rendering an opinion to the contrary. They further relied on findings from multiple non-party medical providers within the workers' compensation records to establish that the clients' treatment did not cause any additional harm to the plaintiff. Accordingly, the Court held that summary judgment was warranted on two distinct grounds and dismissed the plaintiff's complaint.

Continued Success for Hofmann and Friedberg with Summary Judgment Win for Metropolitan Hospital

Christopher W. Hofmann (Associate-White Plains, NY) and Alan Friedberg (Senior Counsel-White Plains, NY) secured total summary judgment from the Westchester County Supreme Court on behalf of a large metropolitan hospital client in a medical malpractice action arising from the emergency department (ED) treatment of wrist fractures. The plaintiff alleged improper evaluation and treatment in the hospital's ED, and that the codefendant orthopedic surgeon failed to timely and properly perform appropriate surgery to treat the wrist fractures, resulting in permanent disability, pain, and suffering. Notably, plaintiff was an inmate at a New York maximum-security prison where Chris deposed him on two occasions.

Chris and Alan moved for summary judgment, arguing that the clinical examination and radiographic work-up of the plaintiff's wrist injury in the ED was entirely appropriate, the ED providers properly and timely consulted orthopedics, and reasonably deferred treatment decisions to the consulting orthopedic surgeon regarding the management and treatment of the plaintiff's wrist fracture. The motion was further supported by Board-Certified experts in emergency medicine and orthopedic surgery. The sufficiency of the underlying motion papers prompted the plaintiff's counsel to move to be relieved as counsel. Unable to retain new counsel to oppose the motion, Wilson Elser's motion for summary judgment was fully submitted and granted by the court.

Hofmann and Friedberg Obtain Summary Judgment Dismissal for Hospital and Chief of Orthopedic Surgery

Christopher W. Hofmann (Associate-White Plains, NY) and Alan Friedberg (Senior Counsel-White Plains, NY) obtained a Decision and Order from the Bronx County Supreme Court, New York, granting total summary judgment in favor of Wilson Elser's clients, a Bronx hospital and its Chief of Orthopedic Surgery. The action arose from a left total hip replacement procedure in which the plaintiff allegedly sustained subsidence and periprosthetic fractures requiring revision surgery, hospitalization, and extensive rehabilitation. The plaintiff claimed the injury was caused by our client's aggressive and forceful implant insertion and/or the use of an improper prosthetic. In seeking summary judgment, Chris and Alan demonstrated that the implants were properly sized, post-operative imaging showed no fractures, and the plaintiff's complications were instead attributable to undiagnosed primary hyperparathyroidism – an endocrine condition associated with weakened bone and heightened fracture risk – subsequently diagnosed at

a treatment facility. Their motion, supported by an expert Board-Certified Orthopedic Surgeon, persuaded the Court, which found that the plaintiff's anatomy, not any improper medical practice, caused the subsidence and fractures, therefore granting judgment in the clients' favor.

Friedberg, Peticca & Selmecci Obtain Affirmance of Summary Judgment Motion

Alan Friedberg (Senior Counsel-White Plains, NY), Christopher Peticca (Associate-White Plains, NY), and Judy Selmecci (Partner-New York, NY) obtained affirmance of a summary judgment motion on behalf of our major hospital client, from the Appellate Division, First Department. Alan argued the motion before the five-panel bench, which asked probing questions of the plaintiff's counsel, who was appealing the dismissal of his case by Bronx Supreme Court because the expert's affidavit submitted by the plaintiff was insufficient to refute the allegations of the two experts presented by the defense. The EMTs that transported plaintiff's decedent, while not employees of our client, wore hospital insignias, and the ambulance had a hospital emblem, as the result of a contract with the employers of the EMTs, which subsequently went bankrupt. Accordingly, plaintiff's counsel was arguing that the EMTs were ostensible employees of our client. Essentially, the argument was that plaintiff's decedent was provided with oxygen as the result of her abdominal pain, and when she arrived in the emergency room, her blood oxygen level was normal at 100 percent. Accordingly, while plaintiff's decedent went into a code within nine minutes of arriving in the emergency room, the experts pointed out that she was properly treated for the abdominal pain and even for respiratory distress as she was rapidly brought to the hospital emergency room and was in stable condition at the time she arrived at the hospital's emergency room. Both the Supreme Court Justice in Bronx County, and the Appellate Division Bench, readily understood the defense made out by the defense team, and appropriately granted and affirmed a dismissal in this case.

Friedberg & Holland Obtain Defense Verdict in Knee Replacement Case

Alan Friedberg (Senior Counsel, White Plains, NY) and Nicole Holland (Of Counsel-White Plains, NY) obtained a defense verdict after an 11-day trial in Supreme Court, Westchester County. Our client, an orthopedic surgeon, performed a total knee replacement on the plaintiff, and eight months later, plaintiff underwent a revision at the Hospital for Special Surgery during which the prosthetic components placed by our client were replaced with smaller components. At trial, plaintiff claimed the femoral component of the knee replacement was negligently placed, causing an overhang and impingement, which caused excessive pain and required a revision due to excessive scarring that formed from the inability to do physical therapy. At trial, Alan and Nicole were able to produce a musculoskeletal radiologist who demonstrated that the soft tissues in the knee were easily visualized on a MRI before the revision procedure even with the presence of artifact from the metal implants. This expert clearly demonstrated that there was no impingement and no inflammation. Further, the plaintiff claimed permanent injury, as his left leg and knee cramp up and lock. There was also testimony that he experienced excessive atrophy in the leg after the revision due to inability to participate in PT after the first surgery. Nicole presented our independent medical examining expert, who demonstrated that there was no atrophy, the cramping was from long-standing peripheral vascular disease, and that plaintiff, in fact, had an "excellent result" from the revision surgery performed at the Hospital for Special Surgery. The jury came back with a

unanimous verdict in less than 1 hour and 10 minutes of deliberation.

Peticca & Friedberg Successfully Defend Two Urologists in Failure to Diagnose Case

Christopher J. Peticca (Associate-White Plains, NY) and Alan B. Friedberg (Senior Counsel-White Plains, NY) obtained summary judgment in Supreme Court, Bronx County, dismissing the case against our clients, two urologists in Westchester County who treated plaintiff in December 2018 and January 2019 for urinary retention. The plaintiff, a Bronx resident, claimed that the urologists, who together treated him on four separate occasions, failed to diagnose an infection that led to sepsis and a non-ischemic heart attack (Torsade de Pointes) resulting in the need for cardiac shock treatment and a two-week hospitalization. The plaintiff claimed that the urologists failed to timely diagnose and treat the infection that became severe, causing sepsis, which led to the resulting heart attack, hospitalization, and severe physical and emotional trauma. Christopher and Alan's motion was based on the argument that the plaintiff suffered an acute septic reaction to a kidney stone, independent of his urinary retention, resulting in an acute bout of sepsis, which in fact did cause his non-ischemic heart attack. The summary judgment motion pointed out that the treatment to plaintiff's retention was within the standard of care and met the American Urological Association guidelines for treatment of the plaintiff's condition. The plaintiff's expert was not able to adequately refute the claims of a lack of departure from standard of care and the lack of causation based on the diagnosis during the hospitalization for the acute kidney stone that caused plaintiff's sepsis and resulting heart attack.

Friedberg and Holland Obtain Unanimous Defense Verdict in Plastic Surgery Case

Alan B. Friedberg (Senior Counsel-White Plains, NY) and Nicole Holland (Of Counsel-White Plains, NY) represented a plastic surgeon who had performed an abdominoplasty and abdominal wall reconstruction component separation procedure on the plaintiff in 2013. The plaintiff had lost 100 pounds as the result of gastric bypass surgery resulting in a large abdominal pannus. The plaintiff claimed that the component separation portion of the procedure was contraindicated, and resulted in weakening of her abdominal wall, and excessive scarring that caused both physical deformity and mental anguish. Through cross-examination by Nicole, the plaintiff was forced to admit that the claimed mental anguish resulted in no treatment over the past decade as she was concerned psychological treatment may have jeopardized her employment as a corrections officer. Nonetheless, she testified to significant social and psychological issues due to her mental anguish. Through cross-examination of the plaintiff's expert, Alan was able to show that while the expert claimed the abdominal wall was weakened and made more susceptible to herniation, and the resulting scarring was excessive, the expert had written a book in 1998 in which he described similar scarring as to be *expected* from the procedure. The plaintiff's counsel argued that our client failed to document the basis for the component separation portion of the operation, but Alan and Nicole were able to show that the risk of 40 percent recurrence as brought out by our expert and the use of clinical judgment by our client, were an appropriate basis on which the procedure was performed. The jury rendered a unanimous verdict in an hour.

Friedberg and Peticca Secure Dismissal in Med Mal Case Prosecuted for More than 12 Years

Alan Friedberg (Partner-White Plains, NY) and Christopher Peticca (Associate-White Plains, NY) obtained summary judgment dismissing plaintiff's complaint in its entirety, which included claims of medical malpractice and wrongful death. Two nonparty EMTs responded to a 911 call involving plaintiff's decedent's complaints of abdominal pain, nausea, vomiting, and cold sweats and determined that decedent had normal vital signs, treated her with oxygen for comfort per the standard of care for abdominal pain, and timely transported her to the insured hospital where she went into cardiac arrest. She was resuscitated, but suffered brain damage and lived in an extended care facility for approximately 2.5 years until her death. At the pretrial conference, plaintiff's demand was \$5.1 million. Alan and Christopher argued that the insured hospital was not vicariously liable for the nonparty EMTs because the hospital did not employ or dictate the actions of the EMTs, nor did the hospital bill for the services the EMTs rendered. In addition, they argued that plaintiff failed to raise a triable issue of fact with respect to whether the standard of care was followed. Justice Frishman, New York State Supreme Court, Bronx County, granted their motion for summary judgment, holding that plaintiff's expert was not qualified to render an opinion in this case and that the treatment at issue was consistent with the standard of care.

Fernandez, Friedberg and Selmecci Extract Plastic Surgeon from Web of Progressive Diagnoses

Emily L. Fernandez (Partner-White Plains, NY), Alan B. Friedberg (Senior Counsel-White Plains, NY) and Judy Selmecci (Partner-New York, NY) obtained dismissal of a complaint, alleging permanent vision loss, orbit deformity, chronic headaches, impairment in ADLS and other sequela, in the NYS Appellate Division, Second Department, reversing the Westchester Supreme Court's denial of our motion for summary judgment in a medical malpractice case that was scheduled for trial. The plaintiff, a then 32-year-old woman with four children, sought treatment at a non-party emergency room on 3/10/16, reporting she fainted and hit her face, injuring her right eye and causing facial fracture. A CT scan raised suspicion for entrapment of the rectus muscle from the fracture, but the ER doctor documented extraocular movement intact (EMOI). Plaintiff was referred to our client, a plastic surgeon at our hospital's plastic surgery clinic.

1. On 3/15/16, our client determined the plaintiff had EOMI and noted no surgical intervention at that time. Plaintiff was instructed to return in one week.
2. On 3/22/16, the plaintiff reported doing better with continued but improved limitation of movement on extreme right-eye lateral gaze. Plaintiff was permitted to return to work and instructed to avoid heavy lifting, and instructed to return in one week.
3. Neither our client nor the clinic has records for the plaintiff after 3/22/16.
4. On 4/20/16, plaintiff reported new symptoms to her internist, who referred her to an ophthalmologist.
5. At the 6/8/16 ophthalmology visit, plaintiff was referred to an oculoplastic surgeon, who reviewed the 3/10/16 CT and opined the right medial rectus muscle appeared caught on right medial orbital wall fracture.
6. On 9/2/16, the plaintiff underwent surgery, which documented a defect in abduction on forced duction testing. A titanium implant and microplate screws were placed. On follow-up on 10/20/16, plaintiff continued to have diplopia and right abduction deficit.

Our team's summary judgment motion was denied by Judge Alexandra Murphy,

Westchester County Supreme Court, based on an alleged issue of fact raised in the affidavit of plaintiff's plastic surgery expert, based on the 3/10/16 CT, our client should have known plaintiff would suffer muscle entrapment and that our client abandoned plaintiff. The Second Department, in reversing Judge Murphy and granting summary judgment on all claims, agreed with our argument that plaintiff's expert's opinions were conclusory, speculative and unsupported by competent evidence tending to establish proximate causation.

Publications

March 6, 2025

PLUS Publishes Fernandez and Friedberg on Informing Prenatal Patients of Realities of Delivery

Professional Liability Underwriting Society (PLUS) blog

June 5 and June 7, 2024, respectively

National Law Review & CLM Reprint Article on Defending Acquired Ulcer Cases by Fernandez and Friedberg

National Law Review and CLM Magazine

May 28, 2024

Don't wait to litigate – tell patients now that a pressure ulcer is “more likely than not” unavoidable.