



## Bernice E. Margolis

Partner

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Bernice Margolis focuses her practice in the area of construction on behalf of owners, general contractors and subcontractors. She also is experienced in premises liability and Dram Shop Law on behalf of owners of various properties and owners of high-end establishments in New York City, transportation and trucking liability and product liability. Bernice assists clients in preventing, mitigating and managing exposure through risk, crises, and claims and litigation management.

Bernice has extensive experience in the defense of auto liability claims. She supports a high-volume program for a large telecommunications company and is well-versed in navigating liability issues related to motor vehicle accidents, from minor incidents to those that involve serious injuries and large exposures.

Always alert to the increasing economic pressures under which clients conduct their businesses, Bernice is committed to resolving claims quickly and efficiently. However, as it best suits her clients' interests, she will litigate aggressively and has a proven track record in that regard. Indeed, Bernice is known for her excellent rapport and fierce advocacy in implementing cost-effective resolutions that advance clients' objectives.

Bernice is an ardent supporter of many veteran service organizations, including TAPS (Tragedy Assistance Program for Survivors) and several VFW posts. She also supports the United War Veterans Council, a nonprofit, nonpartisan organization dedicated to honoring and serving America's veterans. Each year, Bernice helps to organize the New York City Veteran's Day Parade, the largest in the nation. In addition, she participates in military events such as the annual Army 10 Miler in Washington, D.C.; the West Point Run for the Fallen; and the 500 Run for the Fallen from Concord, Massachusetts, to Arlington National Cemetery, sponsored by Children of Fallen Patriots Foundation to pay for the surviving children of service members to attend college.

### Services

- Complex Tort & General Casualty
- Construction
- Hospitality
- Product Liability, Prevention & Government Compliance
- Transportation

## Education

- Pace University School of Law (J.D., *cum laude*, 2002)
- Manhattanville College (B.A., *cum laude*, 1995)

## Bar Admissions

- New York
- Connecticut

## Court Admissions

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

## Professional Affiliations

- United War Veterans Council

## Awards & Honors

- Selected for inclusion in The Best Lawyers in America® Ones to Watch™, 2024-2025
- Selected for inclusion in *The Best Lawyers in America*®: Ones to Watch in the area of Product Liability Law, 2021-2023
- Raising the Bar Award - Westchester County Bar

# Client Wins

## **Margolis and O'Connor Secure Pre-Answer Dismissal in Residential Habitability Action**

Thomas O'Connor (Associate-White Plains, NY) and Bernice E. Margolis (Partner-White Plains, NY) secured pre-answer dismissal of all claims in the Supreme Court, New York County, on behalf of Wilson Elser's property owner clients in a residential habitability action. The plaintiff, a long-term occupant of a New York City loft unit, alleged that our clients failed to maintain the premises and engaged in a coordinated effort to force her out to increase rent. The complaint cataloged a wide range of alleged deficient building conditions, including unsafe stairways, pest infestations, structural defects, lack of heat and hot water, exposed wiring, and mold. The plaintiff further claimed to have suffered significant emotional and physical injuries, including panic attacks, depression, and gastrointestinal distress. Based on these allegations, the plaintiff advanced numerous causes of action sounding in negligence, premises liability, breach of the warranty of habitability, breach of quiet enjoyment, private nuisance, constructive eviction, and intentional and negligent infliction of emotional distress, seeking substantial compensatory and punitive damages.

Recognizing all claims were either time-barred or improperly pled, Tom and Bernice filed a pre-answer motion to dismiss the plaintiff's complaint on multiple, independent grounds. Central to their motion was the argument that the plaintiff's claims concerning building conditions, habitability, and Loft Law compliance fell within the primary jurisdiction of the New York City Loft Board, and that the plaintiff's failure to exhaust administrative remedies barred the action. The motion further established that the emotional distress claims were time-barred, that the plaintiff's attempt to plead a Penal Law violation failed as a matter of law for lack of a private right of action, and the claims against the individual defendants were legally deficient.

In response, the plaintiff did not meaningfully engage with the merits of Wilson Elser's motion, instead attempting to sidestep dismissal by filing successive amended complaints without leave of court, in an effort to moot the motion. In their reply, Tom and Bernice squarely addressed and neutralized this tactic. They demonstrated that the filings were procedurally improper, contravened the Court's directives, and failed to cure any substantive defects, emphasizing that the plaintiff's latest pleading was merely a "difference without distinction."

The Court adopted our position in full, holding that the plaintiff failed to substantively oppose the motion, that the unauthorized amended pleading was a nullity, and that the plaintiff's failure to address the arguments made on behalf of our clients constituted abandonment of her claims. The Court dismissed the complaint in its entirety.

#### **Margolis, O'Connor, and Stopnik Secure Discontinuance in Complex Declaratory Judgment Action Through Strategic Motion Practice**

Bernice E. Margolis (Partner-White Plains), Thomas O'Connor (Associate-White Plains), and Scott Stopnik (Partner-White Plains) successfully represented an insurance and bonding company – securing a discontinuance and the court's endorsement of their position – after being substituted in as counsel in a seven-year running declaratory judgment action pending in the New York Supreme Court, New York County. After reviewing years of inherited filings, Bernice, Tom, and Scott identified a critical procedural defect that had gone unnoticed for years: the plaintiffs were pursuing identical breach of contract claims in both the declaratory judgment action and the underlying liability action. They moved to dismiss under CPLR § 3211(a)(4), demonstrating that the actions involved the same parties, claims, and relief, and that the underlying action had already reached the summary judgment stage, and that the plaintiffs' claims against our client were fully addressed in that action.

Opposing counsel later conceded they had no basis to resist dismissal and had included the client in the declaratory judgment action merely to obtain additional discovery. The White Plains team declined to delay the matter and instead proposed that the plaintiffs execute a Stipulation of Discontinuance as to the client in exchange for the withdrawal of the motion. At the subsequent appearance, the judge adopted this approach.

Through focused review and strategic motion practice, Wilson Elser extricated the client from a protracted action without further discovery, deposition activity, or costly litigation, eliminating duplicate exposure and streamlining related proceedings.

