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Chris Peticca defends hospitals, physicians, and other health care providers in complex medical malpractice actions and nursing home negligence claims through all phases of litigation, from inception up to trial. He has achieved certification in Wilson Elser's rigorous Mock Trial Invitational, through which our most successful trial lawyers impart their knowledge to those destined to join their ranks.

Prior to joining Wilson Elser, Chris was the Assistant Law Clerk to the Honorable Terry Jane Ruderman, J.S.C. in New York State Supreme Court. Additionally, during law school, Chris gained litigation and advocacy experience in both the public and private sector, and served as the Editor in Chief and Managing Editor of *Pace Law Review*.

Education

- Elisabeth Haub School of Law at Pace University (J.D., 2018)
 - *magna cum laude*
- University of Scranton (B.S., 2015)

Bar Admissions

- New York
- New Jersey

Court Admissions

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

Services

- Medical Malpractice & Health Care

Professional Affiliations

- New York State Bar Association
- New York City Bar Association
- New Jersey State Bar Association

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.

Peticca Gets Reckless Language Stricken; Affirmed on Appeal with Audibert & Selmeci

Chris Peticca (Associate-White Plains, NY) defended a hospital in a case in which the plaintiff pled that the our client's conduct was "careless" and "reckless," and negligent. In conferences and, ultimately, by motion submitted on the court's invitation, Chris convinced Judge Frishman (Bronx County) to strike the "careless" and "reckless" language from the pleadings. The plaintiff appealed. On the appeal handled by Julia Audibert (Associate-New York, NY) and Judy Selmeci (Partner-New York, NY), the plaintiff challenged the timeliness of the motion and argued that the possibility of punitive damages lingers, including pursuant to Pub. H. Law 2801-d. We pointed out in response that none of that is right, arguing that the motion was made when the judge invited the defendant to submit it, so it was entirely within the court's discretion to entertain the motion. In addition, Julia and

Judy argued, the defendant is not a residential health care facility, so PHL 2801-d is not applicable. In addition, the plaintiff had not pled any facts to support a punitive claim and there could be no dispute that the language was prejudicial, and an order striking prejudicial language from pleadings is not appealable and the plaintiff had not sought leave to appeal. The First Department agreed that the order was not appealable but sua sponte granted the plaintiff leave to appeal – only to then agree with all of our other points and affirm.

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.

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.

Fernandez, Peticca & Holland Obtain Dismissal in Nursing Home Wrongful Death COVID-19 Immunity Case

Emily Fernandez (Partner-White Plains, NY), Christopher Peticca (Associate-White Plains, NY), and Nicole Holland (Of Counsel-White Plains, NY) obtained dismissal of a wrongful death case on behalf of nursing home client based on COVID-19 immunity pursuant to the EDTPA. The action involved claims of medical malpractice and nursing home negligence in the care and treatment rendered to the plaintiff's decedent allegedly resulting in COVID-19 infection and death. We drafted a motion to dismiss arguing that the medical records and policies implemented by the facility in response to the COVID-19 pandemic established that the decedent's care was impacted by the pandemic, thus triggering immunity provided by the Emergency or Disaster Treatment Protection Act (EDTPA). The motion further argued that no exception to the EDTPA applied because the plaintiff failed to properly plead allegations of gross negligence, recklessness, and willfulness, as such claims were conclusory and not sufficiently distinct from the underlying negligence claims. In opposition, the plaintiff argued that we failed to conclusively establish whether the decedent's care was in fact impacted by the pandemic and that further discovery was needed to meet that burden. The plaintiff also argued that claims of gross negligence, recklessness, and willfulness provided an exception for the EDTPA and required the motion to be denied. However, on reply, based in part on an analysis of the same case law that plaintiff submitted in opposition, we established that plaintiff's argument was flawed and that we had indeed met the standard for EDTPA immunity in a nursing home negligence case. Specifically, we established that the plaintiff's conclusory claims of recklessness were insufficient to provide an exception to the EDTPA and that medical records and relevant COVID-19-related policies proved that the treatment at issue was impacted by the pandemic. After oral argument on the motion in Supreme Court, Kings County, the case was dismissed in its entirety.

Fernandez and Peticca Defeat Prominent Medical Malpractice Firm in Alleged Failure to Diagnose and Treat Biliary Atresia

Emily Fernandez (Partner-White Plains, NY) and Christopher Peticca (Associate-White Plains, NY) obtained complete dismissal on a motion for summary judgment in Westchester County Supreme Court on behalf of their client hospital and two treating pediatric hospitalists. The plaintiff claimed that we prematurely discharged a jaundiced infant with a direct-to-total bilirubin ratio greater than 15% in violation of the standard of care and the hospital's policy. Plaintiff demanded \$8 million, claiming the alleged departures led to a delayed Kasai procedure, multiple interventional radiology procedures, a liver transplant, developmental delay, and other sequela. Emily and Chris established that the standard of care requires a repeat bilirubin test only when the ratio is greater than 20%, and that the repeat test should not, in any event, be done immediately owing to the pathophysiology of an infant's liver processes. They argued that the plaintiff failed to refute the standard of care for repeat testing and that plaintiff's expert affirmation was speculative and therefore insufficient to raise a triable issue of fact. Ultimately, the court found that plaintiff's expert did not adequately refute that discharging the infant for retesting in an outpatient setting was consistent with the standard of care. The judge also

held that plaintiff's expert failed to opine that the purported failure to perform an in-patient cholestasis work-up and the purported failure to communicate directly with the infant's pediatrician proximately changed the outcome, so the plaintiff failed to raise a genuine issue of fact as to those claims. The codefendant pediatricians remain in the case, as their motion for summary judgment was denied.

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.