



Emily L. Fernandez

Partner

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Emily Fernandez litigates medical malpractice and nursing home cases in state and federal court through and including trial to verdict. Her clients include prominent hospitals, EMS providers, nursing homes, doctors, nurses and other health care providers. Emily is a Regional Representative of the firm's Medical Malpractice & Health Care Practice Team and is active in the firm's Women Attorneys Valued and Empowered (WAVE) initiative, which promotes advancement of female attorneys. Emily lectures to clients and on panels, and she publishes on current trends in the law relating to medical malpractice litigation.

Emily is a talented, diverse, female trial attorney, who excels at advocacy and ingenuity. She solves problems and gets results.

Medical Malpractice

Emily's practice focuses on defending hospitals, ambulatory surgery and urgent care facilities, and health care providers in all medical specialties. She defends against claims relative to all types of medicine, such as complicated delivery/brain damaged infants, failure to diagnose cancer, surgical complications, infection cases, ENT matters, delay in diagnosis cases, stroke/neurological cases, orthopedic matters, radiological misreads and more.

Long-Term Care Facilities & Nursing Homes

Emily's practice includes defending long-term care facilities and nursing homes in claims involving negligence and public health law violations related to pressure ulcers, deep tissue injuries, weight loss and falls.

General Liability

Emily's practice also includes the defense of general liability matters, including slip and falls in medical facilities, intentional infliction of emotional distress, assault, defamation and employment issues.

Services

- Medical Malpractice & Health Care
- Long-Term Care
- Complex Tort & General Casualty

Education

- Rutgers School of Law (J.D., 2008)
 - Equal Justice Medal Recipient, Rutgers
 - *Pro Bono Publico* Distinction
- University of Florida (B.A., 2005)

Bar Admissions

- New York
- New Jersey

Court Admissions

- Supreme Court of the United States
- Superior Court of New Jersey
- U.S. District Court, Eastern District of New York
- U.S. District Court, Southern District of New York

Clerkships

Superior Court of New Jersey, 2008–2009

Professional Affiliations

- Bronx Bar Association
- Westchester County Bar Association
- Birth Rights Bar Association
- Claims and Litigation Management (CLM) Alliance, member
- The Professional Liability Underwriting Society (PLUS), member
- Wilson Elser *WAVE* (Women Attorneys Valued & Empowered)

Publications

September 1, 2025

CLM Features Fernandez Article Examining the Impact of Connecticut Smartphone Policies on Cyberbullying Litigation

CLM Magazine

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.

November 4, 2021

Relias Media Quotes Fernandez on Possible Post-COVID-19 MedMal Case Surge

Relias Media

April 6, 2021

New York and Florida at Odds on Immunizing Health Care Providers from COVID-19 Claims

February 24, 2021

Connecticut Retracts Immunity for Hospitals and Nursing Homes for COVID-19-Related Claims, Effective March 1, 2021

March 31, 2020

Executive Order No. 202.10: What does it say, to whom does it apply, and what does it mean?

Client Wins

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.

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.