



## Kristyna Burkova

Associate

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Kristyna Burkova focuses her practice on the defense of hospitals, physicians and other health care providers in complex medical malpractice actions.

Prior to joining Wilson Elser, Kristyna was an associate at a New York City law firm specializing in medical malpractice. Before relocating to New York, Kristyna was an associate at a preeminent litigation firm in Miami, Florida, where she represented plaintiffs in medical malpractice and product liability cases, as well as multidistrict litigation.

In law school, Kristyna developed a passion for trial advocacy, and she received awards for best ranking student in Legal Communication and Writing Skills classes. She successfully completed the rigorous Litigation Skills Program, was a summer intern at the Miami-Dade State Attorney's Office and worked as a law clerk at a litigation law firm. Outside of her legal career in the United States, Kristyna earned a Master of Laws degree from Masaryk University, Faculty of Law in the Czech Republic.

### Education

- University of Miami School of Law (J.D. and LL.M., 2018)
- Masaryk University School of Law (Master of Law, 2015)

### Bar Admissions

- New York
- Florida

### Court Admissions

- U.S. District Court, Southern District of Florida

### Services

- Medical Malpractice & Health Care

## Professional Affiliations

- American Bar Association

## Languages

- Czech

# Client Wins

### **Semlies & Burkova Secure Dismissal of Case Based on COVID-19 Immunity Grounds**

Lori Semlies (Partner-White Plains, NY) and Kristyna Burkova (Associate-New York, NY) were successful on a motion to dismiss the complaint on behalf of our clients, a hospital and physician, based on COVID-19 immunity grounds, specifically on EDTPA and PREP Act immunities. Lori and Kristyna moved to dismiss at the close of discovery after more than three years of litigation. The 71-year-old plaintiff was transferred to our client hospital with a COVID-19 diagnosis, strep mitis bacteremia, spinal osteomyelitis at C2-C3 and L3-L4, multi-focal pneumonia, and pulmonary edema. Upon admission, he received all indicated care, and when he was stable enough, he was transferred to Mount Sinai Hospital for evaluation for an aortic valve replacement. His injuries healed completely within three months of discharge. When the plaintiff filed suit, Lori and Kristyna submitted a geriatric expert affirmation in support, as well as expert affirmation of a board-certified pulmonary and critical care physician, who was a director of the medical ICU during the pandemic and who detailed the impact of the pandemic on the care at the time of plaintiff's admission. Before filing his opposition, plaintiff cross-moved to amend the pleadings to add a gross negligence cause of action in an obvious attempt to circumvent the immunities. The Court granted our motion pursuant to the immunities afforded by the EDTPA and PREP Act and denied plaintiff's cross-motion for leave to amend the complaint for failure to present a meritorious cause of action. In the decision, following its prior decisions in *Kalogiannis* and *Gerber*, the court noted that plaintiff's claims fall squarely within the immunity.

### **Gregory, Humphries, and Burkova Secure Defense Verdict in Informed Consent Case**

New York City partners Robin Gregory and Ashley Humphries and associate Kristyna Burkova obtained a defense verdict in a medical malpractice case after a two-week trial in Supreme Court, New York County. This case involved then 66-year-old plaintiff with a gastrointestinal stromal tumor (GIST), who underwent a laparoscopic wedge resection. Postoperatively, he developed an obstruction and gastroparesis. The plaintiff claimed that the surgeon failed to advise him of the complications of the surgery and that a benign lesion may have been treated with an alternative open procedure, or watchful waiting. The plaintiff also claimed permanent gastrointestinal issues, including years of vomiting and disability. The defense argued that the only accepted reasonable treatment for plaintiff's 6 cm GIST was surgical excision and that there were no alternatives. Further, the team argued that the plaintiff was fully informed, including drawings that were made at the surgeon's office, and that he suffered well-recognized complications of gastric surgery. The plaintiff's demand before trial was \$1.5 million. The court dismissed all claims other

than informed consent. The jury found that the plaintiff was appropriately informed, and the case resulted in a defense verdict within one hour after submission to the jury for deliberation.

**Burkova and Semlies Secure Dismissal Due to Repeated IME No Show**

Kristyna Burkova (Associate-New York, NY) and Lori Semlies (Partner-New York, NY) were successful with a motion to dismiss the complaint against our client, New York Presbyterian Queens Hospital (NYPQ), for failure to appear for an independent medical examination (IME). The case involved a premature twin baby who sustained an IV infiltration on her left ankle in the NICU at NYPQ, which was treated in the burn unit at New York Presbyterian – Weill Cornell for one week and remained in the NICU for another month due to issues related to her respiratory function and ability to adequately feed. About two months after the infant's discharge home, her left ankle wound was noted as a healed scar by her pediatrician and the infant did not appear to have any continued issues, nor did her parents seek additional treatment. When the plaintiff claimed scarring, open wound, deformity, bleeding, swelling, limited range of motion and conscious pain and suffering, Krystina and Lori designated a plastic surgery IME. The plaintiff did not object to the designation and was ordered to undergo the IME in two consecutive compliance conference orders. Despite plaintiff's repeated failure to appear for the IME (as well as failure to provide other paper discovery), and despite our 11 good faith correspondences, the court gave plaintiff one last chance. Krystina and Lori filed a motion to dismiss the day after the third deadline passed. Hon. Tracy Catapano-Fox of the Queens County Supreme Court granted the motion noting that "[while] dismissal is a drastic remedy, plaintiff's actions and inactions demonstrate willful and contumacious behavior that warrants dismissal under CPLR §3126."