



## Michael E. Gallay

Partner

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Michael Gallay litigates complex medical liability matters on behalf of health care providers and institutions, including nationally renowned physicians and premier teaching hospitals. He has diverse experience managing cases from inception through resolution involving medical specialties such as obstetrics, neurosurgery, oncology and ophthalmology. Michael's experience with judges, opposing counsel, clients and expert witnesses throughout New York State enables him to formulate effective defense strategies to achieve optimal results on behalf of his clients.

Michael joined Wilson Elser from a New York law firm specializing in medical malpractice defense. Prior to that he worked for nearly 15 years at one of the oldest and largest boutique litigation and appellate firms with a practice encompassing professional liability defense and health care industry litigation.

### Education

- Boston University School of Law (J.D., 1992)
- Colgate University (B.A., 1989)

### Bar Admissions

- New York

### Court Admissions

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

### Services

- Medical Malpractice & Health Care

## Client Wins

### **Gallay and Howell Secure Summary Judgment Establishing No Issue of Fact in Medical Malpractice Case**

Michael E. Gallay (Partner-White Plains, NY) and Francis A. Howell (Associate-White Plains, NY) obtained summary judgment in the Supreme Court of the State of New York, Westchester County, on behalf of a large hospital system, a pediatric ENT surgeon, and an anesthesiologist. The plaintiffs alleged the improper prescription of oxycodone for pain relief following a tonsillectomy, resulting in the overdose death of the 5-year-old patient five days after the surgery. The summary judgment motion was supported by the expert affirmations of a pediatric ENT, a toxicologist, and a pharmacologist who had done years of research on the effects of oxycodone on pediatric patients. The experts agreed that the medication was prescribed within the standard of care for ENT surgery, the dosage was appropriate, and the post-mortem oxycodone levels indicated the child must have received significantly more than prescribed. In opposition, plaintiffs' counsel submitted only the affirmation of a retired pediatrician who never performed a tonsillectomy, never prescribed oxycodone to a pediatric post-operative patient, and lacked training in pharmacology or toxicology. The court adopted Michael and Francis's reply argument, finding that the plaintiffs' purported expert merely cited out-of-context medical literature, constituting inadmissible hearsay, and failed to demonstrate sufficient knowledge of the applicable standard of care for prescription of oxycodone or pertinent pharmacological factors of pediatric oxycodone use. Accordingly, the court held that Wilson Elser met the burden of demonstrating a prima facie right to summary judgment and that the plaintiff expert's affirmation was insufficient to create an issue of fact.

### **Gallay & Hofmann Obtain Summary Judgment for Nursing Home Client Based on Immunity Under Emergency Disaster Treatment Protection Act**

Michael E. Gallay (Partner-White Plains, NY) and Christopher W. Hofmann (Associate-White Plains, NY) successfully moved in Dutchess County Supreme Court for summary judgment on behalf of our nursing home client on the basis of immunity under the Emergency Disaster Treatment Protection Act (EDTPA). The plaintiff's primary claim was that the facility failed to prevent multiple falls resulting in hip fractures requiring surgical reduction. However, the patient's admission from March through July 2020, during the height of the pandemic, was significant for ongoing and worsening behavioral issues, and records clearly documented that the fractures resulted from multiple incidents during which she threw herself off her bed onto the floor despite multiple preventative measures. In addition to a strong defense to the underlying claims, Michael and Christopher successfully contended that EDTPA immunity applied given the time frame and absence of any viable claim for gross negligence. The Supreme Court agreed that the EDTPA was applicable, that our client made a sufficient showing of entitlement to immunity, and that plaintiff failed to raise a triable issue of fact as to whether immunity should attach. Notably, the Court found that plaintiff's expert was conclusory since it failed to address the specific allegations of the Director of Nursing as to how the COVID-19 pandemic affected our client's operations and the various aspects of the decedent's care throughout her admission, including, in particular, the facility's ability to implement enhanced observation, including 1:1 observation, and their ability to transfer the decedent to another facility for a

higher level of care.

### **Gallay and Vitagliano Secure Defense Verdict for Police Officer After Ten-Year Battle**

Michael Gallay (Partner-White Plains, NY) and John Vitagliano (Associate-White Plains, NY), assisted by office paralegal Michelle Natoli, obtained a defense verdict in the New York, in favor of Wilson Elser's client, a Nassau County police officer, successfully concluding a contentious ten-year legal battle. The plaintiffs in this matter brought suit on behalf of the decedent, who died as a result of head injuries sustained in a motorcycle collision. The plaintiffs allege that our client and his partner (co-defendant with outside counsel) recklessly engaged in an unwarranted pursuit of the decedent for a low-level offense without flashing lights or a siren, causing the decedent to flee from the approaching SUV, which he allegedly didn't recognize as a police vehicle. Our client and his partner observed the decedent riding a motorcycle after midnight without illuminated headlights or taillights. When the officers attempted to stop the decedent for a VTL (vehicle and traffic law violation) by turning on the vehicle's flashing lights, he fled at high speed, proceeding through two stop signs and colliding with a car crossing the intersection. Wilson Elser contended that the client did not pursue the motorcycle when it sped away but proceeded in the same direction, arriving at the collision site soon after it occurred. Mike presented expert accident reconstruction testimony, establishing that the decedent was traveling 60 mph in a 30 mph zone just before the collision and that only the motorcycle's rear brakes were applied, preventing the decedent from stopping in time to avoid the collision. After deliberations, the jury found that the decedent's actions were the sole cause of the crash.

**Case Note:** Mike stepped in for trial after Janine Mastellone managed the file for 10 years through extensive discovery and multiple motions against a very contentious plaintiff's attorney.