



Steven V. DeBraccio

Of Counsel

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Steven DeBraccio represents established businesses and individuals in civil litigation. His practice focuses on dispositive motion writing. He is experienced in dispositive motion and appellate practice, having successfully appeared before the Second, Third and Fourth Judicial Departments of the Appellate Division, and the United States Court of Appeals for the Second Circuit.

In the dispositive motion and appellate area, Steven has successfully handled medical malpractice, insurance coverage, construction litigation (Labor Law), civil rights/municipal liability and general premises liability defense. Steven has drafted hundreds of dispositive motions and dozens of appellate briefs in his career.

Education

- Albany Law School (J.D., *summa cum laude*, 2013)
 - Executive Managing Editor, Albany Law Review
- University at Albany (B.A., *summa cum laude*, 2010)

Bar Admissions

- New York
- New Jersey

Court Admissions

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

Professional Affiliations

Services

- Medical Malpractice & Health Care
- Appellate

- New York State Bar Association, CPLR Committee and Committee on Courts of Appellate Jurisdiction

Languages

- Spanish

Client Wins

Borea, DeBraccio, McCrink & Semlies Successfully Defend Three Cases on Behalf of Two Nursing Homes and a Home Care Agency

Anna Borea (Associate-White Plains, NY), Steven DeBraccio (Of Counsel-Albany, NY), Katherine McCrink (Partner-White Plains, NY), and Lori Semlies (Partner-White Plains/New York, NY) defeated allegations against two nursing homes and a home care agency charged with malpractice in the care of three decedents – a tour de force on behalf of Wilson Elser’s Medical Malpractice & Health Care Practice.

The first dismissal was out of Kings County. We represented the nursing home. There, the plaintiff claimed the development and deterioration of pressure ulcers. The pressure ulcers first developed at co-defendant hospital, where the decedent was admitted from June 3, 2020, through July 31, 2020. Plaintiff was then discharged to our client nursing home from July 31 through August 7, 2020. The decedent was then discharged to a non-party hospital and subsequently passed away. By the time the decedent was admitted to our nursing home, he had a necrotic stage IV sacral ulcer, was ventilator dependent, and in kidney failure. Although the hospital admission fell squarely within the immunity provided under EDTPA, the nursing home admission, in part, fell outside of the EDTPA immunity. Our summary judgment motion focused on the clinical unavailability argument as well as Executive Order 210.10 (which alleviated facilities from the requirement to regularly document and extends beyond the EDTPA immunity period). In opposition, plaintiff focused on claims stemming from the facilities lack of documentation.

Next, in a case also out of Kings County, we represented another nursing home. The plaintiff claimed the decedent suffered from a bowel perforation on May 20, 2018, which led to death a few days later. In our motion, we argued that there was no prior indication that (1) the decedent was suffering from a bowel perforation and (2) the decedent should have been sent to the hospital any sooner than he was. In opposition, the plaintiff focused their argument on two instances of isolated rectal bleeding in 2015 and 2017 and an alleged failure to order gastrointestinal consultations following those bleeding episodes. The plaintiff also argued that constipation caused the bowel perforation. This directly contradicted our gastrointestinal expert, who opined the perforation was caused by diverticulitis. In reply and at oral argument, we focused on the fact that this was a case that came down to the days leading up to the perforation at issue, not the years. We further argued that any reference to gastrointestinal consultations was irrelevant to the claims being asserted here as it is still unclear how those consultations would have been able to predict a bowel perforation years later. We also argued that, in those days leading up to the perforation, there was no indication that the decedent was suffering from any signs or symptoms of a bowel perforation. Essentially, we argued that the cause of the

perforation was immaterial to the claims asserted here given the facts then and there existing to the nursing home staff. The court agreed.

Finally, in a case out of Bronx County, we represented an agency providing nursing home care. The plaintiff claimed a failure to diagnose and treat a bump on the decedent's groin. The bump was first identified by the assessing nurse on July 22, 2014, who documented the decedent denied any pain or discomfort to the area and that her vital signs were normal. Nevertheless, the assessing nurse immediately notified the decedent's doctor and requested an evaluation, which was performed the next day. The on-call doctors' office sent a PA to assess the "bump," diagnosing the decedent with cellulitis to the area. The decedent passed away on July 27, 2014, due to the "bump" [an aneurysm] rupturing, resulting in her bleeding out.

In addition to our client, the plaintiff named the on-call doctors' agency and home health aid agency, as well as the PA/doctors individually. At summary judgment, the plaintiff limited their claims against our client, stating the assessing nurse was negligent and departed from the standard of care by (1) failing to send the decedent to the ER on July 22, 2014, when a "bump" was first identified on the decedent's groin and (2) failing to perform a proper assessment of the "bump" on July 22, 2014. In reply, among other things, we argued plaintiff's expert had no experience with home care, the assessing nurse performed a complete and thorough assessment in accordance with the standard of care, and co-defendant PA's actions/inactions superseded the nursing assessment.

DeBraccio Obtains Motion to Dismiss in Nursing Home Wrongful Death Case

Steven DeBraccio (Of Counsel-White Plains, NY) achieved grant of a motion to dismiss in Richmond County Supreme Court in a case alleging negligence, violations of Public Health Law §§ 2801-d and 2803-c, gross negligence, and wrongful death, stemming from the decedent's stay at our client's nursing home. Steven moved to dismiss based on New York state immunity under the Emergency Disaster Treatment Protection Act (EDTPA) and the federal Public Readiness and Emergency Preparedness Act (PREP Act). At oral argument, Steven detailed the distinctions in our case from a similar prior case and gently discussed the proper application of the appellate cases (in particular, the *Holder* decision from the First Department) that were applicable to this action, and methodically discussed the statutory requirements, gross negligence, and prematurity, and comprehensively clarified why plaintiff did not plead a cause of action. As to the gross negligence argument, Steven discussed the particular differences in motions to dismiss under CPLR 3211 (a) (1) based on documentary evidence and CPLR 3211 (a) (7) for failure to plead a cause of action, and how the First Department in *Hasan* treated such gross negligence claims in the context of the EDTPA. Notwithstanding the court's prior decision, the court granted our motion and dismissed plaintiff's complaint in its entirety.

Wilson Elser Team Wins Appellate Support for Dismissal of Claim for Punitive Damages in Nursing Home Public Health Law Case

White Plains, New York, partners Lori Semlies and Katherine McCrink and Steven V. DeBraccio (Associate-White Plains, NY)) received an affirmance from the First Department, granting our motion for summary judgment, seeking dismissal of claims for gross negligence and punitive damages against our client nursing home. The case involved a resident who, over a three-year time period (and a seven-year admission)

sustained approximately 24 falls at our client's nursing home. The plaintiff sued our client for negligence, the Public Health Law, and, as relevant to the appeal, gross negligence and punitive damages. Lori, Katherine, and Steven moved to dismiss the plaintiff's claims for gross negligence and punitive damages, arguing that, in light of the myriad of progressively increasing fall protection protocols afforded to decedent, including close supervision and placement at the nursing station, there was no evidence of a willful disregard of the decedent's rights, any conduct that rose to the level of gross negligence, or, as the First Department put it, "willful conduct that evidences a high degree of moral culpability so as to support a claim for punitive damages." The trial court agreed, and on appeal, the First Department affirmed the dismissal.

DeBraccio Achieves Reversal of Default Judgment in First Department

Steven V. DeBraccio (Associate-White Plains, NY) defended the owner of an apartment complex in a case that involved an alleged slip-and-fall accident on the sidewalk of our client's complex. Our client, due to COVID-19 staffing issues, did not receive notice of the lawsuit and a default judgment was entered against him. The First Department, citing *Sara's Studios, LLC v. Sparkle World LLC* (217 AD3d 465 [1st Dept 2023]), relied upon by Steven in his appellant's brief, concluded that our client did not receive actual notice of the lawsuit. Moreover, in a rare turn of events, the First Department concluded in the interest of justice that it would consider a subsequent affidavit from our client's property manager, and that the affidavit, taken together with a number of other unrelated lawsuits filed by the plaintiff, was sufficient to raise a meritorious defense, in particular, as to whether our client was the proximate cause of the plaintiff's alleged fall and whether our client negligently maintained the subject sidewalk.

DeBraccio and Lang Secure Pre-answer Dismissal for Nursing Home Client in COVID-19 Case

White Plains, New York, associates Steven V. DeBraccio and Kathryn M. Lang achieved a pre-answer dismissal for a nursing home in Bronx County Supreme Court, which was affirmed by the First Department. The plaintiff alleged that the decedent died of COVID-19 due to gross negligence, wrongful death and violation of the decedent's rights under Public Health Law § 2801-d. Kathryn and Steven argued that the plaintiff's complaint was subject to pre-answer dismissal due to the immunity afforded to nursing homes in the Emergency or Disaster Treatment Protection Act (EDTPA). Kathryn supported the motion with a comprehensive affidavit from the nursing home's director of nursing, which outlined the numerous pre-COVID-19 and COVID-19-related infection control policies the facility instituted. The Bronx County Supreme Court granted our motion to dismiss. The plaintiff appealed to the First Department, and Steven argued that based on previous appellate division case law and the principles of retroactivity, the statute was only repealed prospectively not retroactively, and the affidavit from the director of nursing established in 14 paragraphs how the nursing home's response to the COVID-19 pandemic impacted its treatment and care of the decedent. Finally, he argued that the cookie-cutter, boilerplate allegations of gross negligence did not undermine the nursing home's showing of good faith under the EDTPA. The First Department unanimously agreed with the defense arguments, and the decision granting dismissal was affirmed.