WILSON ELSER

Thomas W. Comer

Partner

thomas.comer@wilsonelser.com

New York, NY – 212.915.5244

Thomas Comer is a skilled litigator and trial attorney with more than 20 years of experience. A member of Wilson Elser's National Trial Team, Tom is a seasoned trial partner who has extensive experience in state and federal courts and often brought in to serve as trial counsel on potentially high-exposure cases. Tom regularly defends a variety of litigation and insurance matters in state and federal courts on behalf of insurance companies and their insureds, corporations, corporate officers, municipalities, and individuals. He has tried more than 40 cases to verdict, and he excels at resolving claims through mediation and other alternative dispute resolution methods.

Prior to joining Wilson Elser, Tom was a partner at another firm in the insurance industry. He began his professional career by serving as an Assistant District Attorney and Deputy Bureau Chief in the Kings County District Attorney's Office where he acquired extensive trial and investigative experience.

Property & Casualty
Tom's experience includes defending a wide range of property and casualty matters, including New York Labor Law, construction site accidents, trucking and motor vehicle accidents, construction defects, general liability, personal injury, products liability, premises liability, elevator accidents and negligent security, as well as restaurant, bar and nightclub, and Dram Shop actions.

Education

- St. John's University School of Law (J.D., 1997)
- St. Francis College (B.A., *summa cum laude*, 1994)

Bar Admissions

Services

- Complex Tort & General Casualty
- Construction
- Medical Malpractice & Health Care
- Transportation
- National Trial Team

- New York

Court Admissions

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

Client Wins

Karetsky and Comer Secure Summary Judgment for Site Safety Manager in New York County
Zachary Karetsky (Associate-New York, NY) and Thomas Comer (Partner-New York, NY) secured summary judgment and dismissal of all claims against Wilson Elser's client, a construction site safety manager, in a personal injury action in the New York Supreme Court, New York County. The plaintiff alleged she was struck by fencing that fell from barricades along a temporary pedestrian walkway adjacent to an active construction site, suing the property owner and the general contractor. They, in turn, brought a third-party action against our client seeking contractual indemnification, breach of contract, contribution, and common law indemnification. Zach and Tom moved for summary judgment, arguing that the client never executed the proposed safety consulting agreement containing indemnification obligations and, regardless, owed no duty of care because a site safety manager without authority to control or stop work cannot be liable in negligence. The defendants opposed on various contract, insurance, and factual grounds.

The court granted Wilson Elser's motion in its entirety, finding – consistent with First Department precedent – that the client's role was limited to recommending safety practices and did not include site control. On that basis, the court held that there were no grounds to impose common-law negligence liability on a site safety manager lacking site control authority. Without a viable negligence claim, all third-party claims and cross-claims necessarily failed, resulting in complete dismissal in our client's favor.

Robinson, Comer & Levasseur Secure Summary Judgment for a New York County, Transit Operators, and Driver in Personal Injury Case
Noelle Robinson (Of Counsel-White Plains, NY) and New York partners Guy Levasseur and Thomas Comer defended a NY county, transit operators, and bus driver in a personal injury case with a potential value in excess of $5 million. The plaintiff alleged a fall on a transit bus, from which he initially claimed cervical, lumbar, and right knee complaints treated with injections, but later claimed a traumatic brain injury and cognitive impairments, as well as a permanent inability to work. The plaintiff refused to settle, and the case was set to go to trial in January. Noelle filed a motion for summary judgment, arguing that the plaintiff was not able to establish that the braking of the bus was unusual or violent. In its Decision and Order, the court found it persuasive that even in his inconsistent testimony, plaintiff admitted that the bus was "moving very slowly" when the alleged incident occurred. The driver confirmed at deposition that he slowed upon observing the brake lights of the vehicle in front of the bus, and that the passenger

reported at the time that he did not need medical attention. The decision determined that our clients were entitled to judgment as a matter of law in that the bus was not caused to move in an unusual or violent manner, agreeing that the plaintiff provided no objective evidence of any movement of the bus other than “the jerks and jolts commonly experienced in city bus travel,” despite the plaintiff’s disclosure of an expert with decades of experience, to assert that the bus violated national standards for “jerk rates,” and that the plaintiff raised no triable issue of fact.

Comer and Brown Prove Alleged Injuries Not a Result of Client’s Negligence
Thomas Comer (Partner-New York, NY) and Christin Brown (Associate-White Plains, NY) obtained a defense verdict on behalf of a large international hospitality concessionaire, after a two-week trial in Ulster County Supreme Court. The plaintiff raised the demand from $2 million to $10 million just before trial commenced wile Tom and Christin maintained their top $250,000 offer throughout. The case involved a trip and fall in New York’s LaGuardia Airport. The plaintiff alleged she was struck by an ice box carried by our client’s employee and suffered physical and psychiatric injuries. She claimed she was unable to work and will likely need nursing care, and her now ex-husband claimed loss of services. Tom and Christin presented evidence that plaintiff’s symptoms were a result of a histrionic personality disorder, supported by an expert who testified that plaintiff’s orthopedic injuries were minimal, had mostly resolved and that some were preexisting and degenerative. The plaintiff’s treating neurologist confirmed that objective studies were normal. Further, over objections, the court permitted the introduction of the traumatic brain injury claim, which was diagnosed using DTI testing, which is not generally accepted by the scientific or medical community. Our defense neurologist, neuropsychologist and neuroradiologist testified that plaintiff did not sustain traumatic brain injury as a result of the alleged accident, while attributing plaintiff’s alleged neurological condition to preexisting histrionic personality disorder. A vocational rehabilitation specialist testified that the plaintiff is fully capable of working. Tom and Christin proved to the jury that our client and its employee were not negligent. The jury deliberated for eight minutes before returning a defense verdict.