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SACS Celebrates 16th Anniversary!

SACS FACTS

WINTER 2011

Steven Ahmuty Named 2011 Best Appellate Lawyer

Best Lawyers, the most respected peer-review publication in the legal profession, has named Steven J. Ahmuty, Jr. as the "New York Area Appellate Lawyer of the Year" for 2011. This honor stems from his particularly high peer recognition.

Mr. Ahmuty, a 1978 graduate of Albany Law School where he was a law review editor, heads the firm's Appellate Practice Group, typically retained when a client hit with a large verdict wants a fresh perspective on the case.

Nothing motivates Mr.

Ahmuty more than oral argument before appellate panels, for which he stresses that preparation is key. What might other-



Partner Steven J. Ahmuty, Jr. heads the firm's Appellate Practice Group

wise be an intimidating experience becomes very satisfying with proper preparation. If you're able to answer the jurists' ques-

tions and provide what they need in your brief, your job is done. In the end, you can only hope you win more than you lose, Mr. Ahmuty notes.

In addition to appellate expertise, Mr. Ahmuty regularly provides litigation strategy in high-exposure and complex cases. In this way, issues are preserved for appeal and cases are assessed and postured for favorable results or settlement early on in order to minimize the client's exposure and expense.

We congratulate Mr. Ahmuty on his well-deserved honor.

SACS Ranked Among Best Law Firms of 2010

U.S. News & World Report has ranked SACS nationally as among the **Best Law Firms of 2010**, and one of only two Tier 1 law practices on Long Island, for its excellence in medical malpractice defense.

These rankings stem from surveys of over 10,000 law firms rated by *U.S. News* and the publishers of "The Best Lawyers in America", as well as confidential surveys by lawyers and clients.

According to *U.S. News*, "Achieving a high ranking is a special distinction that signals a unique combination of excellence and breadth of expertise."

SACS is privileged by this unique recognition.

Medical Malpractice

Henry Z. Shaub successfully defended a wrongful death suit demanding \$11 million against a hospital for allegedly failing to properly manage the 38-year old decedent's post-operative course and complications leading to peritonitis, sepsis and multi-organ failure following an elective laparoscopic sigmoid resection for recurrent diverticulitis.

Marc J. Citrin was victorious in a wrongful death action demanding \$8.5 million against the Chief of the Medical Intensive Care Unit and an emergency room attending physician who allegedly failed to timely treat the 57-year old decedent's pneumonia.

Also winning defense verdicts was **William G. Spratt** in a case by a 38-year old plaintiff alleging that the defendant orthopedic surgeon failed to timely diagnose compartment syndrome necessitating a below-the-knee amputation, and against allegations that the defendant ophthalmologist failed to properly treat the infant plaintiff's esotropia, resulting in lost vision in one eye.

Gerard J. Cushing won a defense verdict in a suit demanding \$2.5 million against a pediatrician who purportedly failed to appreciate the nature and extent of a gluteal hematoma leading to foot drop and RSD sustained by the 22-year old plaintiff following a wave-runner accident.

In an action alleging negligent performance of a colon resection and repair of the ensuing hernia, **Gerard J. Cushing, Lisa Pessah Bloom** and **James M. Lee** successfully moved to dismiss a case stricken from the calendar due to plaintiff's delinquency with discovery and later failure to serve any expert disclosure and submit to an IME on his alleged mental anguish claim.

In a suit alleging negligence during the labor and delivery of an infant causing skull fracture and severe neurological injuries, **John D. Paterniti** secured a discontinuance of all claims against the hospital and resident just prior to the close of plaintiff's case.

In a \$3 million case alleging negligence in the formation of a rectovaginal fistula following colostomy reversal, **Adam S. Covitt** secured a discontinuance for a hospital whose radiologists purportedly failed to identify an abscess formation, thus delaying proper diagnosis.

Brian J. Casey obtained summary judgment dismissal for an OB-GYN sued on an ostensible agency theory for sharing office space with other OB-GYNs who purportedly mismanaged a patient's placenta previa and premature labor, and won a protective order over a hospital's credentialing, re-credentialing and physician employment files and related testimony.

Appellate Practice

Steven J. Ahmuty, Jr. won a new trial from the Court of Appeals based on an inconsistent jury verdict finding that defendant's failure to monitor the patient was a substantial factor in causing her injury, while the negligence of a nonparty physician in failing to transmit his urinalysis results to defendant was not.

On appeal to the Fourth Department, **Timothy R. Capowski** obtained a retrial of a VTL § 388 liability trial involving a quadriplegic based on the trial court's improper preclusion of plaintiff's admissions to having been the driver of the vehicle, which would preclude liability against the defendant auto leasing company.

In the Second Department, **Steven J. Ahmuty, Jr., Timothy R. Capowski** and **Juan C. Gonzalez** obtained a reduction of over half million dollars to a future lost earnings award based on unsupported assumptions and projections by plaintiff's economist.

Also in the Second Department, **Christopher Simone** and **Lena Holubnyczyj** won dismissal of a medical malpractice action based on the motion court's abuse of discretion in granting plaintiff an extension to serve the complaint beyond the 120-day statutory service period absent any grounds for good cause or interests of justice relief as well as affirmance of an order granting defendants summary judgment dismissal of an action alleging

arm injury to an infant plaintiff from intravenous administration following birth.

In the First Department **Christopher Simone** and **Lena Holubnyczyj** won affirmance of an order granting summary judgment dismissal of a complaint alleging a delay in diagnosing Stage IV lung cancer in the 47-year old decedent.

Also in the First Department, **Robert M. Ortiz** obtained an affirmance of an over \$1 million reduction in a lost earnings award because plaintiff's economist relied on assumptions lacking record support and unduly inflated his projections.

Design Professionals

Steven R. Goldstein and **Jeffrey R. Beitler** won summary judgment dismissal of a Labor Law 240(1) action against a design professional, involving serious personal injuries resulting from plaintiffs' fall from scaffolding, on the grounds that their client was not responsible for the contractor's means and methods of work or for site safety.

Criminal Defense

Rick Castello won a dismissal in U.S. District Court for an executive charged in a federal securities litigation in and persuaded the N.Y. County District Attorney's Office to not charge a crane company executive in connection with a fatal crane collapse. Rick also represents a political consultant charged with grand larceny and money laundering during a political campaign and is challenging enforcement of a District of Columbia statute unfairly and improperly prohibiting the sale of cigar wrappers.

Insurance Coverage

Christopher Simone and **Scott M. Fusaro** won a pre-answer motion to dismiss a subrogation action based on the plaintiff's lack of standing to challenge the defendant insurer's rescission of an insurance policy to a physician for which plaintiff was vicariously liable, and on a post-trial motion obtained a \$22.5 million reduction of a pain and suffering award.

General Liability

In U.S. District Court, **Juan C. Gonzalez** successfully moved to dismiss Dram Shop and premises security claims against a restaurant proprietor.



Henry Z. Shaub, Marc J. Citrin, Gerard J. Cushing and Adam S. Covitt presented an "Emergency Medicine Resident Mock Trial" to assist clients in key risk management issues.

William G. Spratt joined a NY State Trial Lawyers CLE panel discussion on "Damages" and lectured on "Jury Selection" at St. John's University School of Law.

Christopher Simone and Second Department Associate Justice **Peter B. Skelos** delivered a CLE entitled "A Primer on Appellate Practice" at the NYC Friars Club.

Pictured (l-r): **Ralph V. Morales, Christopher Simone, Adam S. Covitt, Hon. Peter B. Skelos and Gerard S. Rath**

Season of Giving

During the past Holiday Season, SACS participated in the **Second Annual Holiday Gift Card Drive** for The Children's Hospital of Montefiore Medical Center and sponsored a **Food & Clothing Drive** to benefit the Interfaith Nutrition Network.



Hellenic Lawyers Association President **Mamie Stathatos-Fulgieri** hosted "Judiciary Night" at the Onassis Center. Pictured with Mrs. Stathatos-Fulgieri (center) are (l-r) Hon. Nicholas Garau-fis (EDNY), Hon. Harriet George (Ret.), Hon. Norman George (Ret.), Hon. Robert Nahman (Ret.), Hon. Gerard Rosenberg (Kings Co. Sup.), Hon. Peter Kelly (Queens Co. Surr.), Hon. Jaimie Rios (Queens Co. Sup.), Hon. Charles Lopresto (Queens Co. Civ.), Hon. Maria Ressos (Kings Co. Hous.), Hon. Peter B. Skelos (AD2D) and sponsor Kirk Karabelas, Esq. (Chairman, Alma Bank).

Publications & News

- **Steven J. Ahmuty, Jr.** co-authored articles entitled "Mandamus as Federal Review Remedy", "Powers of State Appellate Courts" and "Preservation of Error: A Threshold Consideration" in the November 30, 2010, January 5, 2011 and March 2, 2011 respective issues of the *New York Law Journal*.
- **William G. Spratt** has been elected Treasurer of the Nassau-Suffolk Trial Lawyers Association.
- **Steven R. Goldstein** authored articles in the firm's *Design Professionals Newsletter* entitled "Tips on Drafting Better Contracts" and "Questions Arise Whether New York Labor Law Applies to Architects and Engineers".
- **Mamie Stathatos-Fulgieri** has been appointed as the first Legal Counsel in Residence for the Hellenic Medical Society of NY.

New Additions

- **Maggie P. Emma** graduated *cum laude* in 2010 from Hofstra University School of Law, where she concentrated, published and received honors in Health Law and Policy, and possesses solid medical research and clinical experience.
- **Lauren J. Daniels** joins the firm with extensive litigation and writing experience in both the public and private sectors, including defending physicians, nurses and hospitals from high-exposure medical malpractice claims.
- **Sari Havia** brings SACS over a decade of legal experience at other prominent New York City defense firms representing medical professionals and institutions against malpractice claims.
- **Edward Kim** joins us after many years with another prominent Long Island defense firm representing physicians, hospitals, nursing homes and other entities in state and federal court against medical malpractice, general negligence, discrimination and premises liability claims.
- **Cassiah M. Ward** adds her invaluable experience prosecuting misdemeanor and felony cases as a New York County Assistant District Attorney to the firm's medical malpractice defense team.

Decisions of Interest

- **Untimely Expert Disclosure:** Plaintiff's expert affidavit properly rejected as he never complied with CPLR 3101(d) requirements and only first identified the expert in opposition to defendant's summary judgment motion, after filing of note of issue and certificate of readiness (*Pellechia v Partner Aviation Enterprises, Inc.*, 80 AD3d 740 [2nd Dept., 2011]).
- **Internet Discovery:** All records related to plaintiff's online Facebook and MySpace accounts are discoverable as relevant to defending the claimed permanency of her injuries (*Romano v Steelcase*, 907 NYS2d 650 [Sup. Ct., Suffolk Co. 2010]).

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