

KENNETH S. MERBER

CAREER HIGHLIGHTS

OBTAINED DEFENSE VERDICT ON BEHALF OF INTERNATIONAL PROPERTY OWNER/MANAGEMENT AND ONE OF LARGEST MAINTENANCE COMPANIES IN U.S.

Fulton v. ABM Industries, Inc., Mack-Cali Realty, LP And Mack-Cali Realty Corporation

(Supreme Court of New York, Westchester County)

General Liability

Insurance Carriers for Defendants: Self-Insured.

Excess Carriers: Ace Property & Casualty Ins. Co., Federal Insurance Co. and National Union Fire Ins. Co.

TPA: ESIS.

GVK Attorney: Kenneth S. Merber: **Defense Verdict**

On September 16, 2016, after a 2-week trial in the Supreme Court of the State of New York, Westchester County, Kenneth Merber obtained a defense verdict on behalf of an international property owner/property management company and one of the largest maintenance companies in the United States. The case involved an alleged slip and fall accident. The claimant was a 42 year old man who was employed by a tenant of the building. He fell shortly after a cleaning woman cleaned an employee break room and mopped its floor. The claimant alleged the defendants created a dangerous and defective condition and failed to provide adequate warnings. Defendants denied all liability and asserted that the building was reasonably safe and that they provided adequate warnings. Plaintiff alleged that he sustained numerous injuries including lower extremity fractures, tendon and ligament tears, Reflex Sympathetic Dystrophy (RSD)/ Complex Regional Pain Syndrome (CRPS) and acute on chronic injuries., Plaintiff claimed he is completely disabled and unemployable. He has been actively treating for his medical conditions and currently ambulates with a cane and a CAM boot when not in a wheel chair. Plaintiff and his physician testified that Plaintiff has sought an amputation of the affected limb to limit or end his pain. Plaintiff's settlement demand at the commencement of the trial was \$10 million. The demand was reduced to \$3 million during the trial but never lower. The jury returned a unanimous defense verdict in favor of Mr. Merber's clients in less than 30 minutes.

OBTAINED DEFENSE VERDICT IN A COMMERCIAL BUS CASE

Morales v. New Service, Inc. and Abel Reinoso

(Superior Court of New Jersey, Bergen County)

Commercial Bus Accident

Insurance Carrier: AIX (Nova Casualty)

TPA: York Claims Services, Inc.

GVK Attorney: Kenneth S. Merber: **\$50,000 verdict** for pain & suffering (\$750,000 was offered before and during trial)

Kenneth S. Merber successfully defended a commercial bus and its driver during a 4 week trial. The case involved a 28 year old Hispanic man whose Honda Civic was rear ended by the defendants' bus in Fort Lee, NJ. Following the accident, the claimant was immediately transported by ambulance to a hospital. He sought continuous treatment for 2 1/2 years and was diagnosed with multiple herniated discs, spondylolysis and spondylolisthesis. Plaintiff's course of treatment included, chiropractic, orthopedic, neurologic care and pain management. After 5 epidural steroid injections failed to resolve his pain, he underwent multi-level laminectomy, discectomy, decompression and interbody fusion surgical procedures. Thereafter, Mr. Hurtado underwent a long course of physical therapy and rehabilitation. Plaintiff claimed he was permanently injured. Plaintiff's past medical expenses totaled more than \$500,000. His life care expert projected future medical expenses totaling more than \$4 million. Mr. Merber convinced the 8 person jury that Plaintiff only suffered minor injuries as a result of the collision and that his spinal conditions were neither caused nor exacerbated by the trauma from the accident. Mr. Merber argued that Morales Hurtado had the surgery to address his long standing conditions and the possibility of future instability despite the fact that there was no evidence Plaintiff ever complained of back pain or sought any treatment for same prior to the accident at issue. Although defendants had offered \$750,000 prior to trial, on January 6, 2016, the jury returned a verdict of only \$50,000 for pain & suffering and \$71,600 for medical expenses. These amounts were reduced by 20% for plaintiffs comparative negligence.

OBTAINED FAVORABLE SETTLEMENT AFTER 4 WEEK TRIAL FOLLOWING VERDICT

Trikkas v. Second Generation Caterers d/b/a The Grove

(Superior Court of New Jersey, Essex County)

Premises Liability/Construction Accident

Insurance Company for Defendants: AIX Insurance (Nova Casualty)

TPA: York Claims Services, Inc.

Kenneth S. Merber obtained a favorable verdict on behalf of a New Jersey first class catering hall and its principals. The case involved an incident that occurred while portions of the premises remained under construction. The claimant fell down a set of concrete stairs sustaining closed head trauma, a fractured knee, torn meniscus of the knee, a fractures to the arm and wrist, TMJ and other injuries. In addition to obtaining a verdict which was less than the settlement offer issued prior to the verdict, Mr. Merber obtained a verdict

requiring a codefendant to indemnify his clients for a percentage of the verdict including his clients' defense costs and attorneys fees.

OBTAINED FAVORABLE SETTLEMENT AFTER MISTRIAL WAS DECLARED
Barrantes and Saez v. 3CM and Almonte, et. al.

(Superior Court of New Jersey, Essex County)

Commercial Bus Accident

Insurance Carrier: AIX Insurance (Nova Casualty)

Kenneth S. Merber obtained an exceptionally favorable settlement following a mistrial. Mr. Merber represented a commercial bus company and its operator in a case involving multiple claimants who were injured in an accident. One of the claimants developed osteomyelitis following spinal procedures necessitating major spine surgery including multi level discectomies, osteotomies and fusions. Although plaintiffs sought damages substantially exceeding the primary insurer's limits and the excess carrier's monitoring counsel made daily "hammer" demands, Mr. Merber negotiated a settlement well within the primary limits.

OBTAINED FAVORABLE SETTLEMENT DURING JURY SELECTION
Gomez v. August Construction

(Supreme Court of the State of New York, County of Suffolk)

Construction Accident/Labor Law 240(1) Claim

Insurance Carrier: Arch Insurance Company

Kenneth S. Merber negotiated very favorable settlement at trial of this construction accident lawsuit. The claimant fell from a ladder sustaining numerous injuries including an L5/S1 herniated disc with compression of the S1 nerve root resulting in a left "drop foot". Plaintiff had multiple surgical procedures including a lumbar discectomy/decompression with interbody fusion. Plaintiff also suffered a tear of the left ankle peroneus longus tendon and tendinosis, chronic Achilles tendon tendonitis; a chronic calcaneonavicular ligament injury, plantar fasciitis, tibiotalar and posterior subtalar joint synovitis, posterior ankle impingement syndrome, and tarsal sinus/canal subchondral cyst.

OBTAINED FAVORABLE SETTLEMENT DURING TRIAL
Alleyne, Audrey v. ABM and Citi Corp.

(Supreme Court of the State of New York, County of Kings)

Premises Liability/General Negligence/Slip & Fall Accident

Insurance Carrier: ABM

TPA: ESIS, Inc.

GVK Attorney: Kenneth S. Merber - **Favorable settlement during trial** (Plaintiff suffered neck, back and wrist injuries resulting in epidural injections and a nerve release of her wrist)

OBTAINED FAVORABLE SETTLEMENT DURING A PRODUCT LIABILITY TRIAL

Napolitano v. Groenewal-Ramsey Door, LLC

(Superior Court of New Jersey, Bergen County)

Product Liability-Catastrophic Brain Damage Claim

Insurance Company: Zurich Insurance

GVK Attorney: Kenneth S. Merber - **\$3.5 million settlement during trial (demand had been \$12 mil)**

Kenneth S. Merber obtained a favorable settlement during trial. Plaintiff Andrew Napolitano, 52, a salesperson with a furniture rental company, was catastrophically injured at his company's facility in Hasbrouck Heights, NJ. The claimant fell from a ladder while inspecting the cause of an overhead commercial garage door being stuck open when the door suddenly crashed onto the floor, striking the ladder and knocking Napolitano to concrete floor. Plaintiff sustained skull fractures, subdural hematomas and brain damage as a result of the incident. He remained in a coma for six weeks.

DEFENSE VERDICT - NEGLIGENCE CLAIMS AGAINST INTERNATIONAL TELEPHONE AND CABLE CORPORATION AND ITS CONTRACTOR DISMISSED

Amell v. Verizon, et. al.

(Superior Court of New Jersey, Gloucester, County)

On October 31, 2014, Kenneth S. Merber obtained a Defense Verdict on behalf of Verizon New Jersey, Inc. Shortly before the jury issued its verdict dismissing the claims against Verizon, the Court granted a Directed Verdict in favor of Mr. Merber's other client, J. Fletcher Creamer & Sons. Mr. Merber successfully defended the claims in which the infant claimant, Tiffany Amell, and her mother, Nicole Amell, alleged that Tiffany was severely and permanently injured and disabled as a result of Defendants' negligence in connection with the construction, installation, maintenance and inspection of Verizon's fiber optic cable system network. The infant plaintiff was 13 years of age at the time of the alleged occurrence. As a result of the alleged accident, Tiffany sustained injuries to her right ankle including a fracture for which she underwent surgery. She subsequently developed RSD, a diagnosis confirmed by the defense experts. At trial, Mr. Merber proved that Defendants were not responsible for the accident. Plaintiffs had demanded \$1.2 million to settle before the jury dismissed the case.

DEFENSE VERDICT - NEW YORK PEDIATRICIAN CLEARED IN BRAIN DAMAGE CASE

Lawrence v. Kuperstein

(Supreme Court, Nassau County)

Kenneth S. Merber obtained a defense verdict in favor of a pediatrician and his partnership after a three week jury trial in the Supreme Court of the State of New York, Nassau County before the Honorable F. Dana Winslow. The plaintiffs alleged that the pediatrician committed malpractice and failed to obtain their informed consent before he prescribed an anti-malaria medication for their son who was 14 years of age at the time. Plaintiffs claimed that as a result of the medication, the infant developed psychosis, depression, an anxiety disorder and other mental illness requiring three separate in-patient psychiatric hospital admissions. Plaintiffs alleged that the infant has been permanently brain damaged as a result of the alleged malpractice and that he will require medical treatment for the remainder of his life.

BROOKLYN PHYSICIAN CLEARED IN ALLEGED FAILURE TO DIAGNOSE THYROID CANCER CASE

Williams v. Dr. Jorge Orellana, Dr. Annette Peoples, Dr. Irene Boginsky, D.D. and First Med Care Incorporated

(Supreme Court of the State of New York, Kings County)

Kenneth S. Merber successfully defended a New York physician and obtained a dismissal of the medical malpractice lawsuit filed against her. The plaintiff was diagnosed with thyroid cancer. Plaintiff alleged that Mr. Merber's client failed to take a proper history, failed to perform appropriate physical examinations and failed to order or refer the plaintiff for diagnostic tests resulting in a delay in the diagnosis of the cancer. Plaintiff claimed the delay in diagnosing her condition compromised her chance for treatment and a full recovery.

WRONGFUL DEATH CASE DISMISSED AGAINST NATIONALLY KNOWN RESTAURANT CHAIN

Axel v. M&W Realty Company ,Junior's Cheesecake, Inc., New Island Hospital and Vlassi Baktidy, M.D.

(Supreme Court of the State of New York, Kings County)

Kenneth S. Merber successfully defended a nationally known restaurant chain in a negligence/wrongful death lawsuit filed in the Supreme Court of the State of New York, Kings County. The plaintiff's estate alleged that Mr. Merber's clients were negligent with respect to their ownership, operation, management, maintenance, supervision and control of their restaurant and that as a result thereof, the deceased plaintiff suffered severe disabling injuries requiring an

extensive hospital admission, surgeries and ultimately, death. Mr. Merber proved his clients were not negligent. The case continued against some of the medical malpractice defendants named in the suit.

PRODUCT LIABILITY LAWSUIT DISMISSED

Howard v. Goodwin v. Miller Environmental

(Supreme Court, Richmond County)

Kenneth S. Merber obtained summary judgment and an order of dismissal of the product liability, Labor Law and negligence claims asserted against his client. The complaint filed in the Supreme Court of the State of New York, Richmond County, alleged that Mr. Merber's clients and several other defendants caused the plaintiff to sustain disabling orthopedic and neurologic crush injuries as a result of a defective light tower. Mr. Merber's client was involved in the emergency response to an oil spill at the time of the alleged incident. The complex litigation involved multiple theories of liability, commercial contract claims and conflicts and choice of law issues.

LABOR LAW CASE AGAINST NEW YORK PROPERTY OWNER DISMISSED

Rodriguez v. A & A United Construction, Inc., Arsen Khanimov and Emiliya Dimant.

(Supreme Court, Kings County)

Kenneth S. Merber successfully defended a Brooklyn property owner and obtained the dismissal of all claims filed against her. The lawsuit, filed in the Supreme Court of the State of New York, Kings County, alleged numerous violations of New York's Labor Law in addition to claims of general and common law negligence. Mr. Merber proved his client was not negligent and that she did not violate any of the Labor Law provisions relied upon by the claimant. The plaintiff alleged catastrophic injuries including fractures and brain damage.

DEFENSE VERDICT – MOTOR VEHICLE ACCIDENT/PEDESTRIAN KNOCKDOWN WITH ALLEGED BRAIN DAMAGE.

Dailey v. Quik Park Garage Corp.

(Supreme Court, New York County)

On December 22, 2004, after a two week jury trial, Kenneth S. Merber obtained a defense verdict from a New York County jury in a case in which the plaintiff claimed to have sustained traumatic brain injuries as a result of the negligent operation of a truck by Mr. Merber's client. Plaintiff, who was a pedestrian at the time of the accident, was a highly paid executive of a world renowned real estate company. Plaintiff was struck by the defendant's vehicle while walking in a crosswalk. As a result, liability was not contested. Mr. Merber contested plaintiff's claims that she suffered brain damage and

neuropsychological injuries as alleged. Mr. Merber proved to the New York County jury that plaintiff was a malingerer and exaggerated the nature and extent of her injuries and disabilities. The jury dismissed plaintiff's case after only minutes of deliberation.

DIRECTED VERDICT - CONSTRUCTION FIRE

Osorio v. Madison 45 Company

(Supreme Court of New York, Kings County)

Kenneth S. Merber obtained a directed verdict in favor of a commercial property owner after two weeks of trial in the Civil Court for the City of New York, Kings County over which the Honorable Genine Edwards presided. The plaintiff suffered second and third degree burns over 12% of his body as a result of a construction accident workplace explosion resulting from the ignition of flammable vapors. Plaintiff obtained a verdict against the co-defendant tenant on the same date as Judge Edwards directed a verdict in favor of Mr. Merber's client. In a related case, Mr. Merber successfully prosecuted a declaratory judgment action obtaining indemnification and reimbursement of legal costs and expenses exceeding \$100,000 in favor of his client and its insurer against another insurer. The declaratory judgment obtained from the Supreme Court, Kings County was affirmed by the Appellate Division, Second Department.

DEFENSE VERDICT FOR ELECTRICAL CONTRACTOR IN SUPREME COURT, QUEENS COUNTY

Vitale v. A.E. Schmidt v. E.J. Electric Installation Co.

(Supreme Court of New York, Queens County)

Mr. Merber obtained a defense verdict following a jury trial of a construction accident case in the Supreme Court of the State of New York, Queens County. The Honorable Patricia Satterfield presided over the trial in Queens County. Plaintiff, a construction worker, fell while constructing a building as a result of defectively placed rebar. Plaintiff sustained numerous orthopedic injuries requiring surgery. The jury found co-defendants owner and contractors liable under Labor Law §200 and §241(6). The Labor Law §241(6) claim was predicated upon a violation of Rule 23-1.7(d)(1). The jury also apportioned 40% comparative negligence against the plaintiff. The jury did not apportion any fault against Mr. Merber's client.

BROOKLYN OB/GYN CLEARED IN BRAIN DAMAGED BABY CASE

Lavinier v. Gordon

(Supreme Court, Kings County)

Kenneth S. Merber successfully defended a Brooklyn OB/GYN obtaining a dismissal of all medical malpractice claims asserted against her. The infant plaintiff suffered catastrophic brain damage as a result of the alleged malpractice related to the labor and delivery. Although the co-defendants settled the case with plaintiff for \$5 million, no contribution was made on behalf of Mr. Merber's client and the case against her was dismissed.

BRAIN DAMAGE CASE DISMISSED AGAINST OB/GYN

Amador v. Patel.

(Supreme court, Queens County)

Mr. Merber obtained a dismissal of a lawsuit on behalf of an OB/Gyn against whom plaintiff alleged medical malpractice. The infant plaintiff suffered catastrophic injuries including fetal hypoxia, hypoxia acidosis, severe brain damage, neurological deficits in speech, language, cognitive and motor skills, impaired gait, difficulty ambulating, cerebral palsy, visual and hearing deficits.

DEFENSE VERDICT ON BEHALF OF BROOKLYN VASCULAR SURGEON

Kelly v. Brooklyn Hospital v. Brahmbatt

(Supreme Court - Kings County)

Kenneth S. Merber obtained a defense verdict on behalf of a Brooklyn vascular surgeon after a three week jury trial conducted in the Supreme Court of the State of New York, Kings County before the Honorable Melvin Barasch. In that case, the plaintiff's estate filed claims against Mr. Merber's client and a Brooklyn hospital for medical malpractice and wrongful death. Plaintiff's decedent was involved in a motorcycle accident. Thereafter, he was transported to the co-defendant hospital. The patient was severely injured and required a below knee amputation which was performed by the vascular surgeon represented by Mr. Merber. Plaintiff claimed that the defendants failed to adequately monitor the patient and failed to appreciate his presenting signs and symptoms of a liver laceration and internal bleeding. Plaintiff's estate claimed that as a result of the failure to appreciate and diagnose the patient's condition, the patient exsanguinated. The same jury that issued a defense verdict in favor of Mr. Merber and his client awarded \$3.85 million against the co-defendant hospital.

MEDICAL MALPRACTICE CASE DISMISSED AGAINST ORTHOPEDIC SURGEON

Norris v. Adler

(Supreme Court, Kings County)

Kenneth S. Merber obtained a dismissal of a medical malpractice lawsuit filed in Kings County against an orthopedic surgeon who performed three

surgical procedures upon the plaintiff including hip replacement surgery. Plaintiff claimed that Mr. Merber's client and co-defendant doctors and hospitals negligently diagnosed, cared for and treated the plaintiff resulting in post-operative complications and permanent disabilities.

DEFENSE VERDICT IN CONSTRUCTION SCAFFOLD ACCIDENT SUIT BY BRONX JURY

Cabrera v. Stahl Broadway

(Supreme Court - Bronx County)

Kenneth S. Merber obtained a defense verdict from a Bronx County jury in a Labor Law claim following a three-week jury trial. Plaintiff, a construction worker, fell from a scaffold while performing waterproofing work on the exterior of a building above its roof. Plaintiff sustained numerous injuries as a result of the twelve foot fall including injuries to his head, neck, back and shoulders. Injuries included herniated discs at L4-5 and C5-6, lumbar and cervical radiculopathy, impingement syndrome to his right shoulder and permanent incapacity from work. Although plaintiff demanded \$1.2 million throughout the three week trial, the Bronx County jury issued a defense verdict in favor of Mr. Merber's client. The Honorable Stinson presided over the trial.

UNITED STATES COURT OF APPEALS AFFIRMS DISMISSAL OF CLAIMS AGAINST PSYCHIATRIST

Trivedi v. Rubin

(United States Court of Appeals, Second Circuit)

The Justices of the Second Circuit of the United States Court of Appeals affirmed the decision of the Honorable Denise Cote of the United States District Court for the Southern District of New York which granted summary judgment in favor of the firm's client, a New York psychiatrist. Plaintiff claimed that the defendants deprived her of her constitutional rights including those rights to liberty without due process. Plaintiff filed the lawsuit under 42 U.S.C. §1983. Plaintiff claimed that the firm's client improperly performed a psychiatric evaluation and wrongfully committed the plaintiff. Plaintiff also claimed that the defendants improperly placed the patient on involuntarily leave pursuant to §72 of the New York State Civil Service Law. Mr. Merber argued the appeal in the United States Court of Appeals resulting in the dismissal of the federal lawsuit.

MR. MERBER OBTAINED VERDICT IN FAVOR OF FIRM'S CLIENT FOR \$1.5 MILLION IN POLICE SHOOTING CASE

Gomez v. Morales

(Supreme Court, Bronx County)

Kenneth S. Merber successfully prosecuted a plaintiff's personal injury case in Bronx County against a former Police Officer and a municipality in a police shooting case. Mr. Merber's client suffered a gunshot wound to his legs and groin resulting in surgical exploration and repair of a ruptured urethra and resulting in temporary loss of bladder function and sexual function. After a three week jury trial, Mr. Merber obtained a verdict in favor of his client in the amount of \$1.5 million.

DEFENSE VERDICT - SUPERMARKET CASE DISMISSED

Palatnik v. Pathmark

(Supreme Court, Kings County)

Kenneth S. Merber successfully defended a national supermarket chain obtaining a defense verdict after a two-week jury trial in the Supreme Court of the State of New York, Kings County. The plaintiff, in the lawsuit, claimed to have sustained significant physical and cognitive injuries as a result of the alleged negligence of the store and its employees. Specifically, plaintiff claimed that the store's employees failed to maintain the store in a safe condition, allowed dangerous and defective conditions to exist and caused the infant plaintiff to fall and suffer closed head trauma, a fractured femur and other injuries.

FEDERAL PRODUCT LIABILITY CLAIM DISMISSED

Stuht v. Silver Associates, Ltd.

(United States District Court, Southern District of New York)

Kenneth S. Merber, obtained summary judgment and dismissal of all claims against his client, a distributor of high end European designed chairs. In this lawsuit, filed in the United States District Court, Eastern District of New York, the plaintiff claimed that as a result of the defective design and manufacture of a chair, she suffered numerous injuries including herniated discs requiring back surgery and leaving her with permanent neurological deficits.

CLAIMS AGAINST NEW JERSEY MUNICIPALITY DISMISSED

Polito v. Borough of Glen Rock, Dept. Of Taxation

(Superior Court of New Jersey, Bergen County Tax Court)

Kenneth S. Merber obtained a discontinuance of various claims asserted against the mayor and multiple council members of a Northern New Jersey municipality. The claimants alleged fraud, breach of contract, conspiracy, tortious interference of contractual relations and 28 USC§1983 claims against Mr. Merber's clients. The claims derived from a failed tax revaluation.

SUCCESSFUL PROSECUTION OF DJ ACTION

Great American Insurance Group v. Atlantic Mutual Insurance Co

(Supreme Court, Kings County)

Mr. Merber successfully prosecuted a declaratory judgment action on behalf of one of the insurers represented by Callan, Koster, Brady & Brennan, LLP as against another carrier. Mr. Merber obtained indemnification and reimbursement for legal fees and expenses incurred by the firm's client against another insurer whose insured was liable for the claimed damages in an underlying bodily injury lawsuit which arose out of a construction accident.

DECLARATORY JUDGMENT ACTION SUCCESSFUL PROSECUTION IN PRODUCTS LIABILITY CLAIM

Parra-Luna v. Urban Development Partners (61), LLC.

(Supreme Court, Queens County)

Kenneth S. Merber successfully defended the firm's client, a commercial real estate owner, in connection with product liability and general liability claims asserted against it. Plaintiff suffered significant injuries including deformity to his hand as a result of an allegedly defective and malfunctioning window. Mr.. Merber also successfully prosecuted related third-party and declaratory judgment actions obtaining a complete defense and indemnification from third-parties.

LEGAL MALPRACTICE LAWSUIT DISMISSED

Marriott v. Morris, Duffy, et. al.

(Supreme Court, New York County)

Mr. Merber and David LoRe obtained an order of dismissal in connection with a legal malpractice lawsuit filed against one of the firm's clients. Plaintiff claimed that the defendant attorneys failed to adequately represent her interests in connection with a personal injury lawsuit related to a construction accident. Mr. Merber successfully defended the firm's client obtaining a dismissal of all claims

LABOR LAW CASE AGAINST MUNICIPALITY DISMISSED. SUCCESSFUL APPEAL

Snellman v. Village of Port Chester

(Supreme Court, Westchester County)

Mr. Merber successfully defended a Westchester County municipality and obtained a dismissal of all claims filed against it. The Supreme Court of the State of New York, Appellate Division, Second Department, reversed a prior decision of one of the judges of the Supreme Court, Westchester County, which denied

the motion for summary judgment filed by Mr. Merber and David LoRe in a construction accident case. The plaintiff in this case was a dock builder who was constructing a bulkhead when he claims he fell from an elevated surface suffering numerous injuries requiring multiple surgical procedures and incapacitating him from future employment.

WRONGFUL DEATH ACTION - MANLIFT ACCIDENT CLAIMS DISMISSED

Altinma v. Glenwood Management et. al.

(Supreme Court, Queens County)

Kenneth S. Merber obtained won summary judgment and dismissal of all claims filed against his clients, a parking garage operator and a commercial and residential property owner related to a manlift accident that occurred within the parking garage in the building. The decedent's family claimed that as a result of the negligence and violations of New York's Labor Law, plaintiff's decedent was crushed and suffocated as a result of a defective and malfunctioning manlift. Mr. Merber aggressively defended the action from its inception and obtained an order dismissing all claims against his client. Plaintiff appealed from that decision. Mr. Merber argued the appeal in the Appellate Division, Second Department. The Appellate Division, Second Department affirmed the lower Court's decision and dismissed all claims filed on behalf of the plaintiff.

WRONGFUL DEATH/MEDICAL MALPRACTICE CASE AGAINST ORTHOPEDIC SURGEON DISMISSED

Bilyk v. Popovitz

(Supreme Court, Kings County)

Kenneth S. Merber obtained an order granting summary judgment and dismissing all claims filed against his client, a prominent New York orthopedic surgeon, in a wrongful death and medical malpractice action filed in the Supreme Court of the State of New York, Kings County. In this case, the plaintiff's family members sued Mr. Merber's client and other defendant physicians alleging medical malpractice and wrongful death. Plaintiff alleged that the defendants failed to properly and timely diagnose, treat and adequately respond to the plaintiff's decedent, signs, symptoms and complaints of shoulder pain, insomnia, loss of appetite and altered mental status. The decedent was ultimately diagnosed with sepsis and septic shock which led to her death.

LABOR LAW CLAIMS DISMISSED

Borek v. United Drilling, Inc.

(Supreme Court, Kings County)

Kenneth S. Merber obtained an order from the Honorable Yvonne Louis of the Supreme Court of the State of New York, Kings County granting summary

judgment and dismissal of all claims and causes of action filed against an excavating contractor. The plaintiff, an employee of a fire proofing contractor, fell down an elevator shaft sustaining catastrophic injuries to multiple parts of his body including: fractures to his extremities and spine; closed head injuries with traumatic brain injury; and partial paralysis. Plaintiff received more than \$5 million in a settlement with other defendants.

**FORKLIFT CONSTRUCTION ACCIDENT/PRODUCTS LIABILITY CLAIM
DISMISSED**

D'Alessandro v. McClinch v. Adco Electrical

(Supreme Court, Richmond County)

Kenneth S. Merber obtained summary judgment and dismissal of the labor law and product liability claims filed against his client, an electrical contracting corporation. The lawsuit was filed in the Supreme Court of the State of New York, Richmond County. Plaintiff claimed that as a result of a forklift accident, he sustained numerous injuries including closed head trauma, concussion, traumatic brain injury as well as neck, back and shoulder injuries.

LAWSUIT AGAINST PROPERTY OWNER DISMISSED

Fordham Heights Realty Corp. adv. Reskakis v. Fordham Heights Realty Corp.

(Supreme Court, New York County)

Kenneth S. Merber obtained summary judgment and dismissal of all claims filed against his client, an owner of commercial and residential real estate in Bronx, New York. The Honorable Karen Smith of the Supreme Court of the State of New York, New York County granted Mr. Merber's motion. Plaintiff had claimed that the defendants were negligent and improperly inspected, maintained and repaired the public sidewalk and a tree well causing plaintiff to trip and fall and sustain numerous injuries including tears to the ligaments and cartilage in her knees and shoulder and head injuries including traumatic brain injury. She required sutures and staples to close her head wounds.

**MEDICAL MALPRACTICE CASE AGAINST EYE SURGERY CENTER
DISMISSED**

Reece v. Mid-Manhattan Surgical Center et. al.

(Supreme Court, Kings County)

Kenneth S. Merber successfully defended a Manhattan out-patient eye surgical center. Plaintiff claimed that the firm's client and co-defendant failed to obtain plaintiff's informed consent and then, negligently performed glaucoma surgery including a trabeculectomy with the application of Mitomycin-C. As a

result of the alleged negligence, plaintiff suffered numerous ophthalmological injuries including: loss of intraocular lens; loss of cornea; damage to the retina; ptosis and deformed iris; several choroidal detachments; amblyopia; neurological loss; and loss of vision. Mr. Merber proved that at all times, the care and treatment provided by his client comported with good and accepted medical practice without departing there from. The case was discontinued at trial. Mr. Merber's client did not contribute to any settlement.

MEDICAL MALPRACTICE AND WRONGFUL DEATH ACTION DISMISSED AGAINST PHYSICIAN

Lewis v. Malhotra.

(Supreme Court, Kings County)

Kenneth S. Merber obtained summary judgment and an order dismissing all claims filed against a Brooklyn internal medicine physician. The plaintiff's family members claimed the defendant physicians and medical institutions committed malpractice in failing to appropriately treat a patient while in the hospital and while admitted to a nursing home. Plaintiffs claimed that the decedent, as a result of the negligence of the defendants, developed decubitus ulcers resulting in sepsis and death.

NEGLIGENCE CASE DISMISSED AGAINST PROPERTY OWNER

Nilsen v. Zollo

(Supreme Court, Kings County)

Kenneth S. Merber obtained summary judgment and dismissal of all claims filed against a Brooklyn property owner. Plaintiff, who tripped and fell on an allegedly defective sidewalk, alleged that she was injured as a result of the negligence of several defendants, including one of Mr. Merber's clients. Plaintiff suffered injuries to her head, nose, lip, right hand and knee. Plaintiff was diagnosed with neurological injuries including a "trigger thumb" and torn ligaments in her knee which was treated surgically.

BLACK ICE CASE DISMISSED.

Makaron v. Luna Park Housing Corp.

(Supreme Court, Kings County)

Mr. Merber obtained a dismissal of all claims filed against a Brooklyn property owner and manager. Plaintiff claimed to have slipped and fallen on black ice in a housing complex owned and operated by the firm's client. As a result of the accident, plaintiff suffered a fracture of the left ankle which required an open reduction, internal fixation surgery. Mr. Merber obtained summary judgment and an order dismissing the case with prejudice. Plaintiff appealed

from that decision and the Appellate Division, Second Department affirmed in a decision often relied upon and cited by New York attorneys.

CONSTRUCTION CLAIMS DISMISSED - AFFIRMED BY APPELLATE DIVISION, SECOND DEPARTMENT

Ricuarte v. Madison 45 Company et. al.

(Supreme Court, Kings County)

Kenneth S. Merber obtained summary judgment dismissing plaintiff's claims asserted under Labor Law §200 and §240(1). The Court denied defendant's motion in connection with Labor Law §241(6) claims and allowed them to proceed to trial. Mr. Merber appealed from that portion of the decision which denied summary judgment on the Labor Law §241(6) claim. The Appellate Division, Second Department reversed the lower Court's decision in connection with the Labor Law §241(6) claim and in effect, dismissed the case in its entirety. The case involved a construction accident in which two workers suffered severe burns as a result of the ignition of flammable vapors. Plaintiff claimed that the property owner and its tenant were liable for his accident and resultant injuries.

CASE AGAINST BROOKLYN DOCTOR DISMISSED IN FAILURE TO DIAGNOSE LUNG CANCER CASE. DISMISSAL WAS AFFIRMED BY APPELLATE DIVISION SECOND DEPARTMENT

Micciola v. Mittal et. al.

(Supreme Court, Kings County)

Kenneth S. Merber obtained summary judgment and an order dismissing the medical malpractice claims filed against his client, a Brooklyn internal medicine physician who treated the plaintiff at a long shoreman's clinic. The plaintiff, a member of a long shoreman's union, developed lung cancer. Plaintiff claimed that as a result of the failure to diagnose and delay in diagnosing his lung cancer, the cancer metastasized, requiring surgical resection of his lung, extensive chemotherapy and compromised his prognosis for a cure. Plaintiff successfully prosecuted the case against co-defendants obtaining a recovery of \$1.35 million. Plaintiff appealed from the order obtained by Mr. Merber granting summary judgment in favor of his client. After argument of the appeal, the Appellate Division, Second Department of the Supreme Court of the State of New York, issued a decision affirming the prior order of the Honorable Marsha Steinhardt of the Supreme Court, Kings County which granted summary judgment and dismissed the case against the firm's client.

ELEVATOR CASE DISMISSED

Gregory Shlemovich & Elizabeth Rodriguez v. Forty-Seventh Fifth Company, et. al.

(Supreme Court, Kings County)

Mr. Merber successfully defended the firm's client at trial. Plaintiff claimed that while operating a freight elevator, the elevator suddenly fell. As a result of the accident, plaintiff sustained a fracture of the left proximal fibula, a strain of the lumbar spine, lumbo sacral pain syndrome, a torn meniscus in his right knee and herniated discs at L3-4, L4-5 and L5-S1, together with a torn right rotator cuff and torn ACL of the left knee and two cracked teeth. Plaintiff underwent three surgical procedures, one to his right shoulder and one to each of his knees. Plaintiff settled with co-defendants for \$250,000. Mr. Merber's client did not contribute to the settlement and the claims against it were dismissed.

PRODUCT LIABILITY CASE DISMISSED DURING TRIAL

Ruiz V. Wohl Associates, et. al.

(Supreme Court, New York County)

Kenneth S. Merber successfully defended a distributor in a product's liability case obtaining a dismissal of the case against the firm's client. The plaintiff sustained severe fractures of his hand requiring amputation of two fingers as a result of utilizing a defective food processor. Mr. Merber's client did not contribute to the \$2.8 million settlement negotiated between plaintiff and co-defendants. The case was tried in the Supreme Court of the State of New York, New York before the Hon. Alice Schlessinger.

CASE DISMISSED AGAINST BROOKLYN VASCULAR SURGEON

Cole v. Brahmatt.

(Supreme Court, Kings County)

Mr. Merber successfully defended a Brooklyn vascular surgeon and obtained a dismissal of all claims filed against him. In this case, plaintiff claimed that the firm's client failed to adequately perform a vascular consult and examination and failed to author a consult note pertaining to his examination of the patient. Plaintiff also claimed that the firm's client departed from good and accepted medical practice in failing to request a second opinion. As a result of the alleged negligence, plaintiff, following a cardiac catheterization, developed symptoms including elevated temperature, vomiting, right femoral pain, right knee and ankle pain and was diagnosed with a mycotic aneurysm. Plaintiff suffered urogenital and neurological injuries including a permanent limp. She required placement of a nephrostomy tube due to injuries to her right ureter and a laceration to her inferior vena cava. She also experienced abdominal wall

abscesses requiring surgical drainage. Although co-defendant physicians settled the case with plaintiff for \$750,000, no contribution was made to the settlement on behalf of the firm's client.

DISCIPLINARY COMPLAINT AGAINST NEW YORK LAWYER DISMISSED.
Brill v. Siller

Kenneth S. Merber successfully defended a New York attorney in an administrative proceeding pertaining to a disciplinary complaint filed against him by a former client. The Complaint Mediation Panel of the Association of the Bar of the City of New York refused to take any action with respect to the disciplinary complaint finding no basis to pursue same after hearings were conducted by Mr. Merber.

WRONGFUL DEATH SUIT AGAINST QUEENS CARDIOLOGIST DISMISSED.
Pak v. Mendelson.

(Supreme Court, Queens County)

Kenneth S. Merber successfully defended a Queens County cardiologist obtaining a dismissal of all claims asserted against him. In this wrongful death medical malpractice lawsuit, plaintiff's estate claimed that the firm's client negligently treated the decedent and failed to appropriately read and interpret the patient's echocardiogram. As a result, plaintiff coded and fell into a permanent comatose state from which he never recovered.

VERDICT IN VEHICULAR LIABILITY CLAIM
Figueroa v. Vasquez and City of New York

(Supreme Court, Bronx County)

Kenneth S. Merber successfully defended an automobile owner/operator in a multi-million dollar brain damage claim. Although the accident only involved a single vehicle operated by Mr. Merber's client and both operator and passenger were ejected from the vehicle, Mr. Merber proved during a five week jury trial conducted before the Honorable Lucindo Suarez, that the City of New York, a co-defendant in the action, was liable for failing to maintain and repair the subject highway and for failing to maintain appropriate signage on the highway which caused and contributed to the catastrophic accident. Mr. Merber's zealous litigation resulted in a jury verdict apportioning 90% of the fault for the accident against the City and only 10% against the firm's client even though Mr. Merber's client was incapacitated, and as such, unable to testify on his own behalf.

DEFENSE VERDICT - MEDICAL MALPRACTICE CLAIM FOR FAILURE TO DIAGNOSE AND TREAT CROHN'S DISEASE

Nandi v. Rosenthal.

(Supreme Court, Kings County)

Kenneth S. Merber second seated in a protracted medical malpractice lawsuit tried in the Supreme Court of the State of New York, Kings County before the Honorable Justin Reichbach. In that case, plaintiff alleged that the defendant doctors and hospitals were negligent in failing to test, diagnose and treat the patient's Crohn's disease. Plaintiff also alleged that defendants were negligent in performing a repair of a perforated ileum and for failing to properly perform a resection of plaintiff's bowel. A defense verdict was obtained on behalf of the firm's client.

SUCCESSFUL DEFENSE AT TRIAL OF PHYSICIAN RESULTED IN FAVORABLE SETTLEMENT

Vasquez v. Anon et. al.

(Supreme Court, Queens County)

Kenneth S. Merber successfully defended an internal medicine physician in a two week trial in the Supreme Court of the State of New York, Queens County and obtained a settlement substantially below what would reasonably have been expected in a case where the plaintiff's decedent sustained serious post-operative complications following aortic valve replacement surgery resulting in bleeding, cardiac tamponade, shock, stroke, coma and death. Plaintiff claimed defendants committed malpractice and failed to properly monitor the decedent's anticoagulant therapy following open heart surgery. The claim was settled after two weeks of trial for less than \$100,000.