

Mark D. Wellman

Shareholder

MDWellman@mdwcg.com

New York – 212.376.6427



For almost 25 years, Mark has defended general contractors and property owners in New York City on a wide range of statutory liability claims brought pursuant to the New York Labor Law and the New York Industrial Code. He has also represented numerous subcontractors in high-exposure construction-related premises liability cases.

In addition, Mark has extensive experience defending manufactures and distributors covering a variety of consumer and industrial products. Mark has defended an aviation parts and engine manufacturer in a product liability action in New York. He has also defended a furniture distributor and a major manufacturer of semi-conductors in a toxic tort matter involving numerous claimants formerly employed at a New York manufacturing facility.

Mark also represents major automobile financing companies in disputes related to ownership, transfer, warranty reimbursement, incentives, as well as franchise concerns. His experience includes counseling automobile financing companies many types of matters, including dealer related concerns, retail installment contracts, lease agreements, branding concerns, and the development and enforcement of finance performance standards. These matters also include alleged violations of The Federal Fair Debt Collection Practices Act and New York Fair Debt Collection Statutes. Furthermore, Mark has represented auto financing companies in bankruptcy proceedings regarding creditor complaints and collection matters.

For almost 10 years, Mark has represented internationally recognized security contractors involved with providing security services at major sporting venues and large commercial centers in New York City and the surrounding suburbs. Mark has also counseled security companies on a variety of matters including the drafting and modifying of security service agreements and security protocol.

Mark has also represented major movie production companies and news organizations in

Practices

- Construction Injury Litigation
- First-Party Property
- Consumer Financial Services Litigation
- Aviation & Complex Litigation
- Automobile Liability
- Product Liability
- General Liability
- Premises & Retail Liability

a large number of premises liability and motor vehicle accident cases, as well as contractual disputes between production companies and subcontractors.

Education

- The Elisabeth Haub School of Law at Pace University (J.D., 2001)
- The George Washington University (B.S., *cum laude*, 1998)

Admissions

- Connecticut, 2002
- New York, 2002
- U.S. District Court Eastern District of New York, 2003
- U.S. District Court Southern District of New York, 2003

Associations & Memberships

- Kings County Small Claims Court, Approved Arbitrator
- New York State Bar Association
- Claims and Litigation Management Alliance (CLM), Board Member, New York City Chapter

Representative Cases & Matters

Granted a motion for change of venue from Queens County to Westchester County in a motor vehicle accident case. According to the claimant, the accident occurred in Westchester County. Upon information and belief, the plaintiff resided in Westchester County on the date of commencement of this action. The defendant is a resident of Dutchess County, and defendant consolidated company's principal place of business is New York County. The plaintiff argued that Queens County was proper venue based on our client's company's place of business being listed as Astoria, Queens based on the vehicle registration. The plaintiff also argued that if the court decided Queens was not proper, then it should be transferred to New York County. The Second Department held that the sole residence of a domestic corporation for venue purposes is the county designated in its certification of incorporation, despite its maintenance of an office or facility in another county. We served the demand to change venue with our answer, and we moved to change venue within 15 days of service of the demand to change venue according to CPLR 511.

Successfully granted a motion to compel acceptance of a late answer in a liability matter. The plaintiff suffered injuries after a locker fell on her while she was putting her things away, or taking them out, at the premises owned by our client. The plaintiff rejected our answer after it was eight months late, but never filed a default motion. We filed a motion to compel acceptance of our late answer. In opposition, the plaintiff filed a cross motion for default, citing cases from the judge that was presiding over this case, where he granted default judgments when defendants were less than eight months late in answering. We argued that in those cases, the plaintiff had already moved for default, along with highlighting case law that shows that if it can be proven that the delay in answering was due to the insurance carrier's fault or taking time to appoint counsel, then

a delayed answer is acceptable. We had an affidavit from the insured and our insurance adjustor. Our motion was granted, and the answer was deemed timely served.

Working with a team, Mark helped to secure a discontinuance for an auto financing company. The plaintiffs sought over \$30 million in damages stemming from breach of contract claims, tortious interference allegations and a companion declaratory judgment action. The case involved the exchange of over half a million documents and extensive electronic discovery. The settlement with the plaintiff did not involve any contribution by the client.

Mark obtained summary judgment in favor of a general contractor in a Labor Law matter, by dismissing numerous Labor Law claims and shifting the risk from the general contractor to the plaintiff's employer. The decision ultimately placed the responsibility for the accident on the plaintiff's employer and the employer's insurance carrier.

Mark represented the general contractor in a trial involving Labor Law §240(1) and §241(6) in Supreme Court, Queens County, in a high exposure case that settled favorably for his client following the cross examination of the plaintiff's treating physician. Mark successfully defended an airplane engine manufacturer in a products liability claim resulting in a favorable settlement following extensive discovery on the eve of jury selection.

In New York County Civil Court, Mark obtained a verdict in favor of an auto financing company against a defendant that abandoned a motor vehicle in Europe.

Mark obtained a favorable decision before the Second Department, Appellate Division for a property owner against plaintiff's employer on a "grave injury" related claim involving Labor Law §240(1) and Workers' Compensation Law §11 (affirmed by New York Court of Appeals).

Mark obtained a dismissal of a plaintiff's Fair Debt Collection claim against an auto financing company in the Eastern District of New York.

Classes/Seminars Taught

- *Risk Transfer, Contractual Indemnification In Labor Law Section 240(1) Cases*, Gallagher Bassett Services, Irvine, CA, July 2013

Published Works

- *Danger: Construction Site. Avoiding Liability & Workers' Compensation Exposure in the Construction Industry*, *CLM Construction Claims Magazine*, Summer 2025

Results

All Claims Dismissed in a Slip and Fall Case at a New York Hospital

We obtained dismissal of all claims against our client in a case involving a slip and fall at

a hospital. The plaintiff was employed by a trucking company and was in the process of filling a liquid oxygen tank located in the parking lot of the hospital when he fell on a sheet of ice near the oxygen station evaporators. He sustained numerous injuries, including injuries to his spine, resulting in cervical fusion. As a result of the accident, the plaintiff alleged significant lost wages, in addition to numerous personal injuries. Our client designed, installed and maintained the oxygen station pursuant to a lease agreement with the hospital. We submitted evidence that our client properly inspected and maintained the oxygen station and that the ice was not caused by the operation of the oxygen station. After years of litigation and numerous depositions, our client moved for summary judgment, seeking a dismissal of the plaintiff's claims and for an order of indemnification against the hospital based on the lease agreement. The court granted our motion in its entirety and dismissed all claims.

Affirmance Achieved in Dismissal of All Claims in New York Labor Law Matter

We successfully achieved affirmance of the trial court's decision to dismiss all claims against a property owner and designer in a New York labor law matter. The plaintiff was injured when he fell from a ladder stacked atop a bakers scaffold while performing renovation work on a four-story brownstone. The 16-foot ladder and the scaffold were provided by his employer—the general contractor—and set up at his employer's discretion. The plaintiff filed an action against the owner of the property and the designer, alleging violations of various labor law claims, including labor law Sections 240(1), 241(6) and 200. The defendants' motion for summary judgment, seeking a dismissal of all claims, was filed after the plaintiff's depositions but before any of the defendants were deposed and with extensive discovery outstanding. The plaintiff opposed the motion and cross moved to compel further discovery. The Supreme Court granted the defendants' motion for summary judgment, dismissing all claims as the property owners qualified for the owner and two-family dwelling exception to the labor law. The trial court held that the defendants did not direct, supervise or control any of the plaintiff's activities. Therefore, according to the affidavit, the single-family home exception did not apply. After oral argument, the Appellate Division affirmed the trial court's decision with costs.

Summary Judgment in New York Labor Law Case

We represented a plumbing subcontractor in a case venued in Supreme Court, Bronx County. The plaintiff alleged he sustained serious neck and back injuries as a result of falling pipes. The plaintiff had been hired by a subcontractor involved with boiler replacement work at a large residential building located in Manhattan. The plaintiff alleged violations of Labor Law Section 200, 240 and 241(6). These claims were alleged against the building owner, management company and various subcontractors at the site. The plaintiff alleged he sustained cervical and lumbar injuries resulting in a cervical fusion and lumbar discectomy. He also allegedly sustained a fracture of the thoracic spine. As a result of the accident, the plaintiff claimed he could not return to work. The settlement demand made before the motions were filed was in excess of \$10 million. The court granted our summary judgment motion in its entirety and dismissed all claims against our client on the basis that our client had absolutely no involvement with the accident, having only performed work on the upper floors of the building. The court order also granted the cross motions by the other defendants, resulting in a complete dismissal

of all claims against all defendants.

Court Dismisses Plaintiff's Labor Law Section 200 Claim and Numerous 241(6) Industrial Code Violations.

We were granted partial summary judgment in a Labor Law case venued in the New York Supreme Court, Bronx County. The plaintiff was installing new floors in a large residential building in Manhattan that was owned by our client. The project involved a large-scale renovation of a penthouse and several lower levels. During the renovation, the plaintiff fell through an opening in the floor and sustained injuries to his knee and back. The plaintiff moved for summary judgment under New York Labor Law Section 240(1). We cross-moved for summary judgment, seeking a dismissal of all claims. Our expert concluded that the plaintiff could have avoided the accident and that proper safety equipment was provided. The court denied the plaintiff's motion and granted our motion in part by dismissing the plaintiff's Labor Law Section 200 claim and numerous 241(6) industrial code violations.

Finance Company Dismissed from Complex, Multi-Million Dollar Lawsuit

Secured a discontinuance for a multi-national auto financing company in a Chancery Division action in New Jersey arising out of claims by a potential franchisee against a dealership, the vehicle manufacturer, the financing company and a potential third-party buyer. The plaintiff's claims sought over \$30 million in damages stemming from alleged violations of the New Jersey Franchise Act, breach of contract claims, tortious interference allegations and a companion declaratory judgment action. The case involved the exchange of over half a million documents and extensive ESI discovery concerning sensitive consumer credit evaluations, personal net worth summaries, proprietary franchise statements, environmental impact studies, internal board meeting minutes, cell phone records, emails and due diligence materials, all subject to an order of confidentiality.

The discontinuance was instrumental in clearing the path for the client to secure a key financing agreement with a new franchisor in a multi-million dollar dealer purchase. The settlement with the potential franchisee did not involve any contribution by the client.

Thought Leadership

June 20, 2025

Danger: Construction Site - Avoiding Liability and Workers' Compensation Exposure in the Construction Industry