

Labor Law, Negligence Cases Extend KDLM Winning Record

Preparation, selectivity, and dedication to clients are a KDLM hallmark, underpinning the firm's reputation for winning large awards in not just medical malpractice cases, but labor law and negligence cases as well.

This is particularly true in three cases brought to KDLM in recent years, for which partners Tom Moore and Judy Livingston secured large settlements.

In 1999, KDLM won a settlement of \$2.4 million in a wrongful death suit. The case was brought by the widow of a 48-year-old construction worker

whose fatal fall from the roof of a public school was caused by a lack of proper safety equipment. The fall resulted in massive head injuries, including multiple skull fractures and significant hematomas, from which the plaintiff never regained consciousness.

The case originated with another attorney who was able to get summary judgment under section 240 of the labor law, which provides for strict liability for general contractors. The defense, however, did not want to pay substantial money on the case. Instead, it raised a question about the amount of lost earnings and contended that there was no conscious pain and suffering from the injury.

The widow's attorney brought in Tom Moore to handle the damages portion of the case. During the one-week trial in Kings County, N.Y. Moore provided evidence of the plaintiff's strong work record and lost earnings potential, as well as loss



of services to the wife and loss of guidance to the couple's only child. The testimony of a neurologist provided evidence that there was, in fact, conscious pain and suffering. The jury returned a verdict in excess of \$3.4 million. After negotiations, the case was settled.

In 1999, KDLM settled another significant labor law case, for \$3.6 million. The wrongful death case, which resulted in a settlement before trial, was brought on behalf of the widow of a long-time union carpenter, who suffered a 17.5-foot fatal fall while constructing a parking garage at the Roosevelt Field Shopping Mall in Garden City, N.Y. The carpenter, a 44-year-old man, sustained intracranial fractures with accompanying hemorrhage, vertebral fractures, rib fractures, and a broken leg. He died three days later, leaving behind his wife, her son from her first marriage for whom he was legal guardian, and two of

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the couple's own children. One of these had severe brain damage stemming from a combination of hydrocephalus and a congenital disorder, requiring 24-hour supervision.

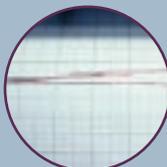
The case against the corporate property owner was begun by another attorney, who sought out KDLM partners Judith Livingston and Tom Moore because of their reputations. Moore and Livingston claimed the defendants failed to provide proper protection on the construction site, such as safety rails and other devices. They also cited the company's failure to comply with sections 200, 240, and 241 of the New York State Labor Law and the Industrial Code of the State of New York, as well as the Federal Occupational Safety and Health Law and regulations. What was remarkable about the outcome was the fact that before a summary judgment motion was brought and prior to a trial date even being set, the settlement was reached. The large settlement was also remarkable given evidence showing that the plaintiff was not aware in the two days before he died and therefore would have had limited conscious pain and suffering.

In 2000, a \$3.6 million settlement against the New York Mass Transit Authority further extended KDLM's successful record in handling negligence cases. The case was brought on behalf of Neil MacFarquhar, a 38-year-old foreign correspondent for the *New York Times* who was hit by a Mass Transit bus while riding his bicycle on Fifth Avenue in New York City.

The bus driver, who suffered a seizure, veered onto a city sidewalk, striking MacFarquhar and causing significant injuries, including internal bleeding, kidney failure, a shattered left hip, broken scapula, injured left ankle, broken right ankle, fractured ribs, injured vertebrae, and hematoma. MacFarquhar underwent multiple surgeries at Bellevue Hospital, including the removal of a kidney. Later, he underwent four months of rehabilitation.

After conducting extensive interviews with attorneys while he was in the hospital, MacFarquhar chose Tom Moore based on his reputation and commitment to getting him the best result. During the early stages of the case, Moore established that the MTA's driver had a significant history of seizures and a history of alcoholism. Based on this evidence, the transit authority conceded liability and settled the case prior to jury selection in August 2000.

Stationed in Cairo, MacFarquhar continues to provide mid-eastern news coverage for the *New York Times*.



Verdicts Over

KDLM's Thomas Moore and Judith Livingston have won 99 million-dollar-plus awards for plaintiffs. Total awards: Over \$1 Billion in Verdicts

- > **\$107.8 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$79.8 M - verdict (T. Moore)**
Med mal/Brain damage to four-year-old.
- > **\$77.9 M - verdict (T. Moore)**
Reduced to \$9.5 by trial judge. Brain-damaged baby.
- > **\$72.6 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$61.6 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$56 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$53.7 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$49.1 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$47 M - verdict (T. Moore)**
Reduced by trial court to \$9.2 M. Brain-damaged baby.
- > **\$44.9 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$43.9 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$42 M - verdict (T. Moore)**
Reduced by trial court, to \$9,109,692. Brain-damaged baby.
- > **\$35.6 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$32.2 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$30.6 M (T. Moore)**
Brain-damaged baby.
- > **\$29 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$25.8 M - verdict (T. Moore)**
Med mal/Brain-damaged infant.
- > **\$23.5 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$23 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$23 M - verdict (T. Moore)**
Reduced by trial court to \$17.7. Brain-damaged baby.
- > **\$21.2 M - verdict (J. Livingston)**
Med mal/Wrongful death of mother.
- > **\$17.9 M - verdict (T. Moore)**
Negligence/Wrongful death of police officer.
- > **\$17.2 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$16.3 M - verdict (J. Livingston)**
Med mal/Wrongful death of mother.
- > **\$16 M - verdict (T. Moore)**
Med mal/Brain damage to woman.
- > **\$15 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$15 M new law verdict (T. Moore)**
Brain-damaged baby.
- > **\$13 M - verdict (T. Moore)**
Med mal/Brain damage to infant.
- > **\$12.8 M - verdict (J. Livingston)**
Brain-damaged baby.
- > **\$12.7 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$12.5 M - verdict (T. Moore)**
Brain-damaged baby.

One Million Dollars

- > **\$12.2 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$11 M verdict (T. Moore)**
Med mal/Wrongful death.
- > **\$11 M - verdict (T. Moore)**
Reduced to \$6.8 M by the trial judge.
Sustained by the Appellate Division and the New York Court of Appeals. Obstetric med mal/Brain-damage to mother.
- > **\$10 M - verdict (J. Livingston)**
Brain-damaged baby.
- > **\$10 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$9.8 M - verdict (T. Moore)**
Med mal/Brain damage to infant.
- > **\$9.5 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$9.5 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$8.8 M - verdict (T. Moore)**
Reduced by trial court to \$3.2 M. Brain-damaged baby.
- > **\$7.8 M - verdict (J. Livingston)**
Brain-damaged baby.
- > **\$7.7 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$7.4 M - verdict (J. Livingston)**
Brain-damaged baby.
- > **\$7.3 M - verdict (J. Livingston)**
Misdiagnosis/Congenital hip dysplasia.
- > **\$7.3 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$7.2 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$7.1 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$6.9 M - verdict (T. Moore)**
Obstetric and pediatric malpractice/Brain damage to infant.
- > **\$6.6 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$6.4 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$6.3 M - verdict (J. Livingston)**
Brain-damaged baby.
- > **\$6 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$5.6 M - verdict (T. Moore)**
Negligent assault.
- > **\$5.5 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$5.2 M - verdict (J. Livingston)**
Misdiagnosis/Brain abscess. Leading to brain damage in adult.
- > **\$4.7 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$4.4 M - verdict (T. Moore)**
Med mal/Wrongful death. After childbirth. Brain-damaged baby.
- > **\$4.2 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$4.2 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$4 M - verdict (J. Livingston)**
Med mal/Gynecological surgery results in disfigurement.
- > **\$4 M - verdict (T. Moore)**
Erb's Palsy.
- > **\$4 M - verdict (T. Moore)**
Misdiagnosis/Brain-damaged baby.
- > **\$3.9 M - verdict (T. Moore)**
Med mal/Removal of tumor results in claw hand.
- > **\$3.8 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$3.8 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$3.7 M - verdict (J. Livingston)**
Med mal/Wrongful death of mother.
- > **\$3.3 M - verdict (J. Livingston)**
Erb's Palsy.
- > **\$3.1 M - verdict (T. Moore)**
Labor law/Wrongful death of man.
- > **\$3 M - verdict (J. Livingston)**
Brain-damaged baby. Retrial of damages for pain and suffering.
- > **\$3 M - verdict (J. Livingston)**
Med mal/Negligence leading to paralysis.
- > **\$2.9 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$2.8 M - verdict (J. Livingston)**
Erb's Palsy.
- > **\$2.8 M - verdict (T. Moore)**
Premises negligence.
- > **\$2.7 M - verdict (T. Moore)**
Med mal/Brain damage in adult male.
- > **\$2.6 M - verdict (T. Moore)**
Negligence.
- > **\$2.5 M - verdict (T. Moore)**
Legal malpractice.
- > **\$2.2 M - verdict (J. Livingston)**
Brain-damaged baby.
- > **\$2.2 M - verdict (T. Moore)**
Med mal/Wrongful death.
- > **\$2.2 M - verdict (T. Moore)**
Reduced by the Appellate Division to \$500,000. Erb's Palsy.
- > **\$2.1 M - verdict (T. Moore)**
Misdiagnosis/Congenital hip dislocation.
- > **\$2 M - verdict (J. Livingston)**
Erb's Palsy.
- > **\$2 M - verdict (T. Moore)**
Med mal/Deafness in child.
- > **\$1.8 M - verdict (T. Moore)**
Med mal/Scarring of infant during delivery.
- > **\$1.7 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$1.7 M - verdict (T. Moore)**
Misdiagnosis for cancer/Amputation.
- > **\$1.6 M - verdict (J. Livingston)**
Failure to diagnose congenital hip dislocation.
- > **\$1.5 M - verdict (J. Livingston)**
Misdiagnosis/Wrongful death.
- > **\$1.5 M - verdict (J. Livingston)**
Misdiagnosis/Leggs-Calve-Perthes disease.
- > **\$1.5 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$1.5 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$1.3 M - verdict (J. Livingston)**
Med mal/Wrongful death of adult male.
- > **\$1.3 M - verdict (J. Livingston)**
Misdiagnosis of cancer.
- > **\$1.3 M - verdict (T. Moore)**
Brain-damaged baby.
- > **\$1.2 M - verdict (J. Livingston)**
Wrongful death case. Surgical error results in death.
- > **\$1.2 M - verdict (J. Livingston)**
Med mal/Paralysis.
- > **\$1.1 M - verdict (T. Moore)**
Wrongful death of father of two.
- > **\$1 M - verdict (J. Livingston)**
Med mal/Injury to kidney during operation.
- > **\$1 M - verdict (T. Moore)**
Med mal/Injury during tonsillectomy.

ABOUT KDLM

ABOUT THE FIRM

"A profound and intimate knowledge of the law is clearly essential to being a superior trial and personal injury lawyer, though that is just a portion of what it takes to create the kind of success we seek," says Kramer, Dillof, Livingston and Moore (KDLM) Senior Partner Tom Moore. The New York-based firm's small size, financial resources, and selectivity are the other reasons for KDLM's extraordinary success rate in representing plaintiffs in medical malpractice and negligence cases. With just five attorney partners and three attorney associates, KDLM is able to take only those cases it believes in.

The firm's client base is economically diverse. A large number are parents of children injured at birth. Among them: a dishwasher, a waiter, a homemaker, a judge. But not all the victims are children: some are single adults, others have families to support. One is a cop, another a construction worker, a teacher, a writer, a sports announcer. What they share is a need to find justice after suffering debilitating injury and loss.

"It is very hard to prove a medical malpractice case," states Senior Partner and trial attorney Judith Livingston. "So we must be extremely careful about which ones we choose to represent; in fact, we take only one out of ten potential cases. As difficult as it is to turn people away, it is ultimately for the good of our clients. By taking only a small number of cases, we are able to provide our clients with total dedication. Everything we do is for the good of the plaintiff."

KDLM's concentration, knowledge, and intensity are characterized by meticulous preparation extending from examinations before trial (EBTs) to writing briefs and handling appeals. Principal attorneys are involved in each case from beginning to end. Technology, experts, and support personnel – including an onstaff legal/medical



KDLM has just moved from its longtime home in the Woolworth building to its new location overlooking Ground Zero – the events of September 11 closed the office down for a month, but the firm set up a temporary office on Long Island.

adviser, as well as paralegal professionals – provide the necessary backing to win so many difficult cases.

The firm is known for its multimillion-dollar awards in personal injury lawsuits, including negligence and medical malpractice, though KDLM's trial attorneys have won large awards in labor law cases as well. Together, they represent clients nationwide, including a case currently venued in Chicago.

ABOUT THE PARTNERS

THOMAS A. MOORE

SENIOR PARTNER

Winning a \$107.0 million verdict would be enough to cap anyone's career – unless you are attorney Tom Moore. In his 14 years as KDLM's senior partner, large awards have gained Moore a reputation as the most successful trial attorney in the U.S, as well as the *National Law Journal's* Lawyer of the Year honor not just once, but twice. Moore's victories of 74 verdicts over \$1 million, all in personal injury cases for plaintiffs injured by negligence or medical malpractice, includes a \$56 million win in February 2002 for a child compensated for medical errors made at the time of her birth.

Moore's career is long on advocacy, research, writing, charitable work, and peer accolades. What is it short on? Lunch, he jokes. "We don't eat when we're on trial. We're too focused on what we do."

Moore's success offsets, but does not mitigate, the obvious sadness of the cases he tries. The large awards are personally satisfying for what they bring to plaintiffs: acknowledgment that they have been wronged. The fact that he is able to win nine times out of ten is more than significant. Defendants typically win four out of five cases.

Moore's signature style, ability to read juries, and absorb the medical science behind KDLM cases is renowned. "He never looks at a note; instead, he internalizes, digests, and embodies the case and speaks with sincerity, straight from the heart. For a jury, he is more than credible," says partner Matt Gaier.

What may be less obvious is his work in setting up a scholarship at his alma mater, contributing his time to worthy causes, and writing a monthly column on medical malpractice issues for the *New York Law Journal* with Partner Matt Gaier (see page 8).



THOMAS A. MOORE



JUDITH A. LIVINGSTON



THOMAS PRINCIPE



MATTHEW GRIER



CARMINE RUBINO

“There’s a level to which you push yourself and sacrifice to win for a client. When you’re in it, there’s nothing else. It’s just you and the trial.”

Senior Partner Tom Moore



Tom Moore and Judith Livingston are members of the elite trial attorney’s group, the Inner Circle of Advocates, and are both listed in *The Best Lawyers in America*, 2001-2002, published by Woodward-White.

Moore’s list of accomplishments is extensive. He is a member of the New York State Trial Lawyers Association and American Trial Lawyers Association. He frequently lectures country-wide for various lawyers’ groups and other professional organizations. Along with KDLM partner Judith Livingston, he is also a member of the Inner Circle of Advocates (an elite group of 100 of the top trial attorneys in the country), a fellow of the International Academy of Trial Lawyers, a member of the American Board of Trial Advocates, and a member of the International Society of Barristers.

Tom Moore graduated from Catholic University, Washington, D.C., with an S.T.L. degree in 1968 and from Fordham Law School, 1972, with a J.D. degree.

JUDITH A. LIVINGSTON

SENIOR PARTNER

Medical malpractice cases are notoriously difficult to win. But with 25 jury verdicts in excess of \$1 million – all in the personal injury area – KDLM senior partner Judith Livingston’s consistent winning record stands in stark contrast to what is admittedly a tough, gut-wrenching area of practice.

Reserved, methodical, and precise, Livingston redefines what the image of the traditional successful trial attorney should be. One thing is clear: Livingston’s courtroom style is all preparation, no swagger. As she puts it, “You have to be comfortable being yourself.”

Livingston has long been one of the most successful plaintiff’s attorneys in the U.S. Along with a near-perfect record of more than 100 settlements, Livingston earned a place as the youngest and first female member to gain entry to the most exclusive bar association in the U.S.: the Inner Circle of Advocates. That was eight years ago.

Limited to the top 100 plaintiff’s trial lawyers in the country, the Inner Circle of Advocates has long been called an “old boy’s network” of plaintiff’s lawyers who consistently win huge awards. Part professional association, part social organization, the group’s members refer cases to each other, discuss new medical procedures, and share information on expert witnesses. Potential candidates who meet the criteria (25 verdicts and at least one \$1 million jury award) still have to wait for an existing member to step down or pass on before they’re admitted. The honors don’t stop there.

Livingston is a fellow of the International Academy of Trial Lawyers. In 1997, she was cited by the *National Law Journal* as one of “40 health care lawyers who have made their mark.” She was also designated by *New York Magazine* as one of the best lawyers in New York and named in March 1998 as one of “The 50 Most Influential Women Lawyers” in America by the *National Law Journal*. She has participated in lectures and seminars in New York State and nationally on the subjects of the trial of medical malpractice and personal injury cases as well as programs on women in the courtroom.

Livingston is most emphatic about the people she represents. “We don’t take on clients casually,” she says. “But when we promise our advocacy, it means bringing all our passion, commitment, empathy, and dedication to the table. We do everything to meet our client’s expectations.”

> Continued from page 5

Judith Livingston is a member of the New York State Trial Lawyers Association on their Board of Directors; The International Society of Barristers; The Bar Association of the City of N.Y.; The Association of Trial Lawyers in America; The Metropolitan Woman's Bar Association; and The American Bar Association, where she was appointed a member of the Special Committee on Medical Professional Liability for the years 1995 and 1996.

“This firm balances compassion with passion in everything we do. Our unique mix of concentration, intensity, and depth of legal and medical knowledge will continue to allow us to garner justice for our clients in those situations where the law allows us monetary damages for injury.”

Senior Partner Judith Livingston

Livingston graduated from The State University of New York, Stony Brook, N.Y., with high honors, and from Hofstra University School of Law in 1979 where she received a J.D. degree and an Honorary Doctor of Law in 1998.

THOMAS PRINCIPLE

PARTNER

KDLM partners Tom Moore and Tom Principe haven't always seen eye to eye. In fact, they used to be adversaries. This was in the mid-1980s, when Principe was doing medical malpractice defense work. “My problem was, I identified more with Tom's clients than I did my own. So I came here to work with him in this amazing office. I've never looked back. Today, my work feels rewarding and life-changing,” Principe states.

Principe's defense background serves him well in conducting the firm's examinations before trial (EBTs) – those depositions form the discovery of the defense's claims. He takes a thorough approach to sifting medical records and transcriptions for information. “I do more than 100 depositions a year. For each one, I apply a trial lawyer's perspective. I nail down the story; find the weak points; intuit the adversary's next move,” he says.

Principe searches through medical records and ascertains each case's vulnerability points in conjunction with KDLM's on-staff medical adviser. His commitment is evident in his off-site work as well. A colonel in New York's Army National Guard, Principe is Staff Judge Advocate to 53d Troop Command.

Principe has been admitted to the bar in New York, Florida, the District of Columbia, the U.S. Supreme Court, and the U.S. Court of Military Appeals. He is a former Assistant District Attorney, Queens County, N.Y. (1974-1979), Deputy Bureau Chief, Supreme Court Trial Bureau (1978-1979), as well as a former member of the medical malpractice and products liability defense bar (1979-1989).



Tom's many professional memberships include the Association of Trial Lawyers of America, the New York State Trial Lawyers Association, the New York State Bar Association, the District of Columbia Bar Association, Queens County Bar Association, Catholic Lawyers Guild of Queens County, and the Board of Directors of the Alumni Association of St. John's University School of Law.

“Putting together a medical malpractice case is like playing a profoundly meaningful game of chess. You've got to understand your adversaries before they understand themselves, and think three moves ahead at all times. Strategic thinking is what sets this firm apart.” Partner Tom Principe

Tom frequently lectures on continuing legal education topics in medical malpractice and trial practice for St. John's University School of Law and the New York State Trial Lawyers Association.

Principe is a graduate of the U.S. Army Command and General Staff College, and St. John's University. He holds a J.D. from St. John's School of Law and also an M.A. from the University of Virginia.

KDLM ACTIVITIES

KDLM has a long tradition of performing pro bono legal work and leadership activities.

KDLM trial attorney Tom Moore set up a Trial Advocates Program at Fordham Law School, intended to teach law students the fundamentals of trial and advocacy work.

Partner Tom Principe is a colonel in New York's Army National Guard, assigned as the Staff Judge Advocate to 53d Troop Command. As of Sept 11, Principe was called to active duty for 90 days, putting in long days between EBTs and serving as lead JAG officer. His first priority: setting up a security perimeter around Ground Zero. Afterward, he looked after the welfare of 650 National Guardsmen. A former Army lawyer, Principe also provides pro bono legal aid to soldiers every Tuesday in the Park Avenue Armory.

MATTHEW GAIER

PARTNER

Partner Matt Gaier concentrates in the area of appellate practice, writing briefs and arguing appeals. For a law firm of KDLM's size, his ability to devote 100% of his time to appellate work is a luxury that translates directly to the firm's prominent wins at the appellate level. These include: *Bryant v. New York City Health & Hosp. Corp.*, in which the New York State Court of Appeals upheld the methodology for calculating structured judgments under the state's periodic payment of judgments statutes; *Altman v. Alpha Obstetrics & Gynecology P.C.*, in which the Appellate Division, Second Department, affirmed a judgment with a principal present value of \$9,437,482, the highest amount sustained by that court in a brain-injured baby medical malpractice action.

Gaier helped KDLM break new ground in *Weldon v. Long Island College Hosp.*, in which the Appellate Division, Second Department, affirmed an award of \$5 million for past and future pain and suffering, the highest award sustained at that time by that court for pain and suffering; and *Martelly v. New York City Health & Hosp. Corp.*, in which the Appellate Division, First Department, upheld prestructured damages awards totaling \$16,690,970, the highest amount sustained by that court in a medical malpractice action.

"In law, preparation is half the battle," Gaier says. "The trick is to deliver your message cleanly. In an oral argument, the key is to know what to say and when to be quiet. I generally prepare one hour for every minute of oral appeal time." His level of preparation extends to briefs as well. "I take pride in making them readable and meaningful," Gaier notes, "so that the plight, the cause is convincing. It should never be dull."

Gaier's familiarity with the law finds another audience, in the monthly column he has co-authored with Senior Partner Tom Moore in the *New York Law Journal* since 1993. Devoted to medical malpractice issues, the column keeps readers abreast of developments in the law and their implications for one of KDLM's most renowned areas of practice. By no means light reading, the articles underscore an important point: If preparation is half the battle, the other half is knowing your audience – and keeping their attention for as long as it takes to get them on your side.

Matt Gaier is a member of the New York State Trial Lawyers Association, the American Trial Lawyers Association, the American Bar Association, the New York State Bar Association, the Bar



Association of the City of New York, the New York County Lawyers' Association, and the Westchester County Bar Association. He is admitted to practice in New York and New Jersey.

He graduated from George Washington University, Washington, D.C., with distinction and from New York University School of Law, with a J.D. degree.

ARTICLES AND PUBLICATIONS

TOM MOORE is the author of *Medical Malpractice*, as well as the ninth and tenth editions of *Evidence in Negligence Cases*, both published by PLI. The first eight editions of this book were written by the late Charles Kramer, KDLM's founder.

TOM MOORE and MATT GAIER coauthor a regular monthly column for the *New York Law Journal*, the daily newspaper for legal professionals. Tom Moore also contributed to the book *Best of Trial*, published by ATLA.

TOM PRINCIPE's articles have appeared in publications for the New York Army National Guard; the *New York Law Journal* ("Yalango vs. Popp: No Need For Plaintiff's Bar To Panic"); *Medical Malpractice in New York* ("Expert Opinion in Medical Malpractice Cases"); and the *County Bar Bulletin* ("The Law of Vehicular Homicide in New York – Has It Changed?").

CARMINE RUBINO

PARTNER

Managing Partner Carmine Rubino oversees the navigation of every client's case through the system, ensuring it is protected and handled efficiently. From sitting with clients to handling settlements, his responsibilities are vast.



Rubino prepares KDLM's cases for trial, overseeing witnesses and experts, as well as lining up medical research and coordinating legal and medical arguments. "We handle 'sad law' cases involving injured children," says Rubino. "Their

"This firm is absolutely distinguished by our ability to really understand what we do, why we do it, and to realize our goals in achieving monetary results. Because we're so strong as trial lawyers, and have such an irrefutable reputation in the courtroom, we have the muscle to pursue these cases to their limits. So we're not afraid to try cases – and we'll never settle unless it's a benefit to the client. In fact, in everything we do, it's always and only about what's good for the client."

Managing Partner Carmine Rubino

parents come to us wounded, too, with nothing but worry, pain, and the dream of wanting a life for their kids. All we can try to do is achieve maximum financial compensation. Clients come here with nothing; our goal is that they leave with something."

Carmine Rubino is a member of both the New York and Connecticut Bar. He is also a member of New York State Trial Lawyers Association, American Bar Association, the Brooklyn, Bronx, Queens, and Richmond Bar Association.

He graduated with a B.A. from Lemoyne College, Syracuse, N.Y., and received a J.D. from Loyola University in New Orleans.

SUMMARY OF *NEW YORK LAW JOURNAL* ARTICLES

KDLM Partners' *New York Law Journal* Column a Staple for Plaintiff's Bar

The complexity of legal issues arising out of medical malpractice decisions and cases provides ongoing opportunity for research and discussion. For more than 30 years, KDLM partners have contributed to this discussion, authoring a monthly column on medical malpractice for the *New York Law Journal*. Since 1993, that column has been co-authored by Tom Moore and Matt Gaier.

While not all of Moore and Gaier's articles contain direct policy implications regarding medical malpractice matters, they remain standard reading among New York medical malpractice and personal injury law firms, and have, as such, contributed to KDLM's reputation for cutting-edge practice.

Monthly subjects run from trial practice to issues of healthcare, "anything that has an impact on medical malpractice litigation and the rights of plaintiffs," Gaier states. Subjects include proving damages; rules particular to malpractice (such as the continuous treatment doctrine relative to the statute of limitations); and grounds for physician or hospital liability. Other topics are more technical,



ranging from trial issues, juries and instructions, and evidentiary issues, to procedural issues (e.g., a plaintiff's bankruptcy).

The articles' content and implications generally focus on New York State, though Moore and Gaier occasionally examine the law of other states. The topics arise from a wealth of sources. A large number stem from the firm's extensive experiences with particular cases that need attention; others come from questions routed to KDLM from other firms. "Many of our topics come from simply staying abreast of recent case law. We may make a new

decision the sole subject – or we may use it to springboard into another area," says Matt Gaier.

Moore and Gaier have tackled every possible topic, including "Abandonment of a Patient" (March/May '01); "Negligent Infliction of Emotional Distress" (July/Aug./Sept. '00); "Liability Under Consumer Protection Statutes" (July '99); "Constitutionality of the Statute of Limitations" (January '95); "Liability for Experimental Treatment" (July/Sept '98); and "Doctors' Liability for Non-Patients" (February '98).

Some subjects get repeat coverage. In the last five years, the pair has written six columns on the emergence of case law governing HMOs, beginning in 1997 when Texas passed some of the nation's first HMO liability statutes. Though not much was happening with HMOs at the time in New York State, by 2001, more cases had appeared. Their most recent column on the subject, part of a three-article series, ran in January 2002.

From the News Office of the National Academies

"The human cost of medical errors is high. Based on the findings of one major study, medical errors kill some 44,000 people in U.S. hospitals each year. Another study puts the number much higher at 98,000. Even using the lower estimate, more people die from medical mistakes each year than from highway accidents, breast cancer, or AIDS."

Moreover, while errors may be more easily detected in hospitals, they afflict every healthcare setting: day surgery and outpatient clinics, retail pharmacies, nursing homes, as well as home care. Deaths from medication errors that take place both in and out of hospitals – more than 7,000 annually – exceed those from workplace injuries.

"These stunningly high rates of medical errors – resulting in deaths, permanent disability, and unnecessary suffering – are simply unacceptable in a medical system that promises first to *do no harm*," says William Richardson, chair of the committee that wrote the report and president and chief executive officer of the WK Kellogg Foundation in Battle Creek, Mich.

