



## Michael V. DeSantis

### Overview

Michael V. DeSantis has 30 years of litigation and trial experience and achieved an "AV Preeminent Rating," which is the highest possible rating, in both legal ability and ethical standards, in the defense of general liability, vertical transportation, elevator and escalator cases, construction accidents and disputes, labor law, professional liability, directors and officers liability, errors and omissions liability, maritime, products liability and commercial litigation. He defends a wide range of clients including attorneys, contractors, vertical transportation, banks, maritime entities, engineers, insurance brokers, title companies, home appraisals, real estate brokers, school districts, and medical professionals in the health/care managed care industry sued in malpractice actions as well as contractors, owners and managing agents in premises cases.

### Admissions

- New York
- U. S. District Courts
  - Eastern District of New York
  - Southern District of New York
- U. S. Circuit Court of Appeals
  - Second Circuit

### Education

- Touro College, Jacob D. Fuchsberg Law Center – J.D., cum laude, Touro Law Review, Journal of Transaction Law
- Binghamton University, State University of New York – B.S.

### Professional Memberships

- American Bar Association, Trial Tort and Insurance Section, Lawyers' Professional Liability Consortium
- New York State Bar Association
- Nassau County Bar Association

### Experience



Partner

### Contact Information

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### Related Practices

- General Liability Defense
- Construction Accidents
- Transportation
- Professional Liability/Errors and Omissions - Defense
- Lawyers
- Real Estate Professionals
- Insurance Agents and Brokers
- Commercial Litigation
- Maritime and Admiralty Law
- Health Care/Managed Care
- Directors and Officers (D&O)
- Education

## Representative Trials

- *Montalto v. KSK Construction, Inc., et al.*, Supreme Court, Suffolk County (Labor Law, Vertical Transportation, Indemnity) – Represented vertical transportation company in a construction accident / contractual indemnity/AI case. Plaintiff (employee of our client) injured when forklift operator struck a sidewalk bridge, causing collapse. Plaintiff obtained summary judgment on his LL §240 claim and the case proceeded to trial on allocation of fault among defendants and third-party defendants (i.e., our client, owner, GC and subs) for indemnity and contribution purposes. Trial involved disputes over multiple contracts, indemnity clauses with various trigger language, post-accident indemnity agreements and their retroactive application to existing obligation. GC argued that a post-accident indemnity agreement was a remedy to mutual mistake and/or modification of the original (pre-accident) contract, was retroactive, and that it would supersede the original indemnity provision in TKE's favor. We maintained that the GC's indemnity agreement was unenforceable since it was a pre-existing obligation not contemplated within the four corners of the indemnity agreement. Ultimately, during trial the parties reached a multimillion-dollar settlement, with no contribution from our client except waiver of certain fees/liens.
- *Crutch v. Wonderworks Construction Corp., et. al*, Supreme Court, Kings County (Labor Law, Indemnity/contribution) – Represented HVAC subcontractor in construction accident case. Plaintiff (employee of a sub) fell off hoist platform at jobsite and commenced suit against GC and owner with claims of Labor Law 200, 240 and 241. GC and owner impleaded various subs with claims of contractual and common law contribution and indemnity. After discovery, Plaintiff obtained summary judgment on his LL 240 claim. Thereafter, a bench trial commenced on the issue of contract terms, conditions and construction and then a jury trial commenced on the issue of allocation of fault to ascertain "triggers" for contractual indemnity purposes among and between GC, sub, sub-sub and sub-sub-sub. Ultimately, jury returned verdict in favor of our client and allocated 100% of fault and substantial cause to the Owner/GC.
- *Weintraub v. Petervary*, District Court, Suffolk County (Legal Malpractice) – Represented attorney in a legal malpractice case arising out of an underlying equitable distribution case. Defendant asserted multi-million dollar legal malpractice counter-claim in response to a main action fee claim. Defendant alleged that our client-attorney was negligent in not securing arguable, marital property located in the United States; preventing same from disappearance to Hungary; not retaining proper experts to value marital property and/or increased value to separate property during marriage; and in handling of ED hearings, among other things. The case was tried over 12 days, with COVID protocols, lasting 6 months, and was ultimately settled for favorable amount (subject to confidentiality agreement).
- *Abrams v. Cross Sound Ferry Service, Inc.*, United States District Court, Eastern District of New York (Maritime Law). Represented one of the largest privately-owned ferry companies in the United States. Plaintiff claimed that she tripped and fell on ferry boat owned and operated by Cross Sound Ferry and consequently sustained serious personal injuries. Plaintiff claimed that CSFS was negligent in ownership and operation of the ferry boat. The case was jury tried over the course of two weeks and after due deliberation, the jury returned a defense verdict in favor of CSFS.
- *Cullen v. PWV Acquisitions and Nouveau Elevator Industries, Inc.*, Supreme Court, New York County (Elevator case). Represented Nouveau Elevator Industries in a door-strike case. Plaintiff claimed that as she exited the elevator

car, the doors closed “too fast and with too much force”. As a result, she was struck and fell, and sustained serious personal injuries including a fractured hip. The elevator car was equipped with cameras which captured the accident on video. Nouveau contracted with the building owner to provide regular maintenance. The case went to trial with allegations from plaintiff and co-defendant-owner of negligence and Nouveau’s responsibility for same. We prepared a trial defense based on dwell times being according to code (and subject to owner’s discretion) as well as code provisions governing door reopening devices which contemplate contact prior to door reversal. The case settled with contribution from owner for a favorable amount during trial.

- *Durando v. GMD Shipyard, Brooklyn Navy Yard and the City of New York*, Supreme Court, Kings County (Labor Law & Maritime Law). Represented the City of New York in a shipyard accident case. Plaintiff claimed that he fell into tanker storage hold and consequently sustained serious personal injuries. Pre-trial motion practice resulted in seminal maritime preemption doctrine. The damages case was jury tried over the course of four (4) weeks and involved twelve (12) experts. After due deliberation, the jury returned a favorable damages verdict.
- *Clisizis v. Nouveau Elevator Industries, Inc.*, Supreme Court, Nassau County (Elevator case). Represented Nouveau Elevator Industries, Inc. in a mis-leveling case. Plaintiff claimed that he fell as she exited a mis-leveled elevator and consequently sustained serious personal injuries. The case was jury tried over the course of three (3) weeks and during deliberations, the case was settled.
- *Sunray Solar v. Lamb, et al.*,. United States District Court, Eastern District of New York (Legal malpractice/tortious interference/business tort case). Plaintiff claimed that his former partner in a solar business venture, with assistance from his attorney (who we represented) engaged in wrongful actions giving rise to claims of breach of contract, tortious interference with contractual relations, business relations and prospective economic advantage. The case was tried to a jury over the course of several weeks and included business valuation experts. Ultimately, we obtained a confidential settlement on behalf of client after charge conference and case went to jury verdict of \$1 million against former partner.
- *Vander Schauw v. Cross Sound Ferry Services, Inc.*, Supreme Court, New York County (Maritime Law) –Represented a ferry company in a general maritime case. The plaintiff claimed the defendant was negligent in its freight storage practices in that a beach chair was able to encroach into the passenger walkway. As a result, the plaintiff sustained a fractured shoulder which required open reduction and internal fixation. Undisputed expert testimony confirmed the plaintiff’s residual loss of range of motion. The plaintiff demanded \$450,000 and asked the jury for \$650,000. After a two-week jury trial, successfully obtained defense verdict on liability.
- *Pharsi v. Hecht*, Civil Court, Queens County (Legal Malpractice) – Represented an attorney in a legal malpractice case arising out of underlying contentious constructive trust action. In the underlying action, a default judgment was entered against the plaintiff and as a consequence, she was divested for her 50 percent interest in her marital domicile. The plaintiff alleged that she retained the defendant to file a motion to vacate the default (which was denied) and appealed denial of the vacation application. At trial, we defended on the lack of evidence of a departure from generally accepted standards and the absence of “but/for” causation. Obtained defense verdict.
- *Conklin-Penwell v. Riverhead Lodge No. 2044, BPO Elks*, Supreme Court, Suffolk County (Adverse Possession, Private Nuisance) – Defended Riverhead Elks against claims of adverse possession and private nuisance. Plaintiff claimed that she obtained title to a portion of Elk’s property via RPAPL 522 and that the Elk’s lawn mower races constituted actionable private nuisance. After 5 day trial, the court returned a defense verdict based on plaintiff’s failure to prove elements of either claim.

- *Prakope v. Gateway Marina.*, Supreme Court, Kings County (General Liability) – Represented marina in general liability case arising out of a golf cart accident on the docks. The plaintiff claimed the defendant backed a golf cart into him on the docks, thereby knocking him down. As a result, the plaintiff sustained multiple disc injuries, which required multiple surgical procedures, including fusions. The plaintiff demanded \$400,000 and asked the jury for \$750,000. Ultimately, the plaintiff obtained a jury verdict of \$132,000.
- *Campbell v. Block Island Ferry Services, Inc.*, United States District Court, Eastern District of New York (Maritime Law) – Represented a ferry company in a general maritime case. The ferry company operated a ferry service between Block Island and New London, Ct. via the vessel *Jessica W.*, a 160' wave-piercing catamaran equipped with ride-control systems. The plaintiff, and her maritime expert, claimed that the ferry company was negligent in its operation of the *Jessica W.* as she rounded the 1BI buoy (NE end of Block Island) where notoriously dangerous waters exist. As a consequence, the plaintiff was thrown inside the passenger compartment and sustained a fractured shoulder, which required open reduction and internal fixation surgery. The jury deliberated over two days and returned a defense verdict on liability.
- *Vitiello v. Surfside Village Condominium, et al.*, Supreme Court, Richmond County (Directors & Officers Liability) – Represented a Board of Managers in a dispute between a condo and an individual unit owner in which the plaintiff, resident/owner of the condominium unit alleged that an adjoining (but independent) condominium was encroaching on her parking space, which was an exclusive, restricted use common element pursuant to the condo Offering Plan and By-Laws. The plaintiff claimed that the Board of Managers breached its fiduciary duties in not protecting the common elements. The case tried and resulted in a defense verdict.
- *Belvery v. Surfside Village Condominium, et al.*, Supreme Court, Richmond County – Involved same issues as *Vitiello*, was consolidated for trial and same result obtained.
- *Kennedy v. Cross Sound Ferry Service, Inc.*, Supreme Court, Suffolk County (Maritime Law) – Represented one of the largest privately-owned ferry companies in the United States. The plaintiff claimed that she slipped and fell on a ferry boat owned and operated by Cross Sound Ferry. The plaintiff claimed that the insured was negligent in ownership and operation of the ferry boat. The case settled for defense costs after jury selection.
- *Walker v. Con Edison, et al.*, Supreme Court, Kings County (General Liability) – Represented a bank in a slip/fall case in which the plaintiff slipped and fell on sidewalk. The plaintiff sued the building owner (landlord), bank (lessee) and Con Ed. Case involved both general negligence (slip/fall) issues and commercial (lease interpretation) issues as between defendants. The case settled after jury selection for a significant amount in total, but only a nuisance value contribution from bank.
- *Pilch v. Astoria Federal Savings & Loan*, Supreme Court, Kings County (Bank Fraud) – Represented a bank in a fraudulent check case in which the plaintiff deposited a check in bank and immediately withdrew funds from the bank. Subsequently, the check was determined to be fraudulent (part of a lottery scam). The bank sought return of funds from the plaintiff, who refused to return the same. The plaintiff was subsequently arrested by the New York Police Department and prosecuted by district attorney. The plaintiff alleged malicious prosecution and intentional infliction of emotional distress. The case tried and settled for nuisance immediately prior to jury deliberation.
- *Black v. 22321 Owners Corp., et al.*, Supreme Court, New York County (Directors & Officers Liability) – The plaintiff, a shareholder and proprietary lessee of cooperative apartment, sought to renovate her apartment. The plaintiff claimed that the Co-op Board of Directors unreasonably withheld approval of her proposed renovation application in violation of proprietary lease and in breach of fiduciary duties. Prior to trial, we filed a successful motion to dismiss the individually named member of the Board of Directors. Trial ensued against the Co-op Corp. and Board. During trial, equitable damages claims were resolved and trial on money damage claims adjourned to future date.

## Notable Decisions on Motion



- *AVC Properties v. Village of Mamaroneck Planning Board, Board of Trustees, and Zoning Board of Appeals, Supreme Court, Westchester County (Municipal Law)* – represented Village and its Boards in a protracted and contentious hybrid action. Petitioner/Plaintiff was a developer granted approval for a 3-lot subdivision with conditions. Subsequently, AVC improved the lot in ways that violated multiple conditions, resulting in ZBA and PB Resolutions. In response, AVC chose litigation, rather than remedying the violations, with allegations of ultra vires, arbitrary and capricious acts. With extensive answer and return, and comprehensive briefing, we answered the Petition and filed MSJ as to Complaint and successfully obtained denial of the Petition and dismissal of the hybrid action, thereby vanquishing AVC's protracted bid to overturn proper municipal action.
- *Collins v. United States Postal Services, United States Circuit Court of Appeals, Second Circuit (Federal Tort Claims Act- Putative Legal Malpractice)*. Retained as appellate counsel to trial counsel to a Plaintiff in a FTCA case. Briefed and argued a matter of first impression in the Second Circuit. Successfully obtained a Circuit Court decision (reversing the District Court) holding that claimants must only provide minimal notice to a U.S. agency, of their personal injury claim, to satisfy the "presentment" requirement of the Federal Tort Claims Act. The underlying case involved a pedestrian who was struck and injured by a USPS tractor-trailer. Trial counsel provided a Form 95 to the USPS, which described injuries in detail and demanded \$10 million. In the District Court action, the USPS obtained dismissal of the Complaint for failure to satisfy the presentment requirement of the FTCA, by arguing that the Form 95 only provided a snapshot of his injuries, but not detail or documentation of his future hospitalizations. The Second Circuit issued a 34-page decision reversing the District Court. In essence, the Circuit accepted all arguments and held that only minimal notice of personal injuries satisfied the FTCA's "presentment" requirement.
- *Morrison v. Long Island Railroad and Nouveau Elevator Industries, Inc., Supreme Court, Suffolk County (Escalator case)*. Represented Nouveau Elevator Industries in an escalator accident case. Plaintiff made ambiguous claims that as she ascended a LIRR platform escalator, as she neared to top, the escalator began to "shake violently", causing her to fall all the way down to the landing. Nouveau and the LIRR had entered into a full service maintenance contract providing for resident services at the LIRR station. On behalf of Nouveau, we filed MSJ as to the complaint and crossclaims, arguing that the escalator was not defective and that we had no notice of any defective conditions. In opposition, Plaintiff contended (supported by an Expert Affidavit from Patrick Carrajat) that Nouveau was negligent and had notice of the defective conditions, or should have had notice had it performed proper inspections. The LIRR also opposed our MSJ arguing that pursuant to the full service contract Nouveau, if anyone, was responsible for any defective conditions with the escalator. Finding that there was no evidence of negligence, the Court granted Nouveau summary judgment, dismissed the complaint and dismissed the LIRR's crossclaims for contractual and common law indemnity and contribution.
- *Molina v. Faust Goetz Schenker & Blee, LLP, United States District Court, Southern District of New York (Legal Malpractice)* – Plaintiff brought suit against the defendant law firm and one of its former associates alleging that the defendants had negligently allowed substantial default judgments to be entered against him in two property damage actions filed in New York state court. Before commencing the legal malpractice action, Plaintiff entered into a pair of assignment agreements with the primary judgment creditor in the state court cases. We filed a motion for summary judgment on the ground that Plaintiff's malpractice claim was barred by judicial estoppel. In a case of first impression, DJ Lewis A. Kaplan held that the equitable doctrine of judicial estoppel precluded a judgment-debtor (such as Plaintiff) from suing as the assignee of the judgment-creditor and cannot recover for legal malpractice against the debtor's attorneys. Judge Kaplan's decision stands as a check on abusive assignments of legal malpractice claims in New York.
- *Golden v. Nouveau Elevator Industries, Inc., Supreme Court, Westchester County (Elevator case)* – Represented Nouveau Elevator in a mis-leveling case. Plaintiff alleged that Nouveau was negligent in failing to inspect and maintain elevator at Phelps Hospital. We moved for summary judgment based on absence of evidence of elevator defect, notice, prior complaints and

inapplicability of doctrine of *res ipsa loquitor*. The Court granted Nouveau summary judgment.

- *Pastorino v. The City of New York, Supreme Court, New York County (Maritime Law)* – Represented marine contractor in barge accident case. Plaintiff was injured as he attempted to egress a tug and ingress a barge. He claimed the tug was not seaworthy and/or adequately configured and asserted general liability and Labor Law claims. We moved for summary judgment dismissing the complaint, based “bare-boat” charter of tug to co-defendant, and on cross-claims for contractual indemnity. The court granted the motion finding that the bareboat charter agreement relieved our client from any liability for the happening of the accident. In addition, the Court also the client contractual indemnity based on the clear and unambiguous language of the bareboat agreement.
- *Ali v. Chakrabarti, et al., Supreme Court, Queens County (Insurance Broker Malpractice)* – Represented an insurance broker in a failure to procure case in which the plaintiff claimed that the broker failed to procure insurance covering his loss. Obtained summary judgment based on an absence of duty.
- *Ballard v. Englewood Contracting, et al. (Real Estate Broker Malpractice), Supreme Court, Orange County* – Represented a real estate broker in a professional liability and breach of contract case arising out of a real estate transaction in which the plaintiff claimed that his attorney, title company and real estate broker conspired to defraud him in connection with the transaction by not disclosing liens on the property. Obtained dismissal of the complaint and cross-claims based on absence of duty.
- *Marsh USA v. Krauter & Co., et al., Supreme Court, Commercial Division, New York County (Commercial/Business Torts)* – Represented an insurance broker in this commercial matter in which the plaintiff claimed that our client tortiously interfered with its contractual and business relations by pirating key employees (in violation of the employees’ employment agreements, non-solicitation clauses, noncompete clauses) and misappropriated trade secrets. The case settled for defense costs during a hearing on the plaintiff’s application for a Preliminary Injunction/Temporary Restraining Order.
- *Fernandez v. City of New York, Supreme Court, Kings County (Labor Law, LHWCA)* – plaintiff sustained serious injuries while working at Brooklyn Navy Yard. He brought claims against the City of New York and Navy yard pursuant to Labor Law and Longshoremen’s and Harbor Workers Compensation Act. We filed motion for summary judgment for failure to satisfy General Municipal Law (and inapplicability of preemption doctrine promulgated by 33 USC 933(a)). The court agreed that GML was not preempted by LHWCA and granted summary judgment dismissing the complaint.
- *Maglione v. Seabreeze by Water, Inc. Supreme Court, Westchester County (Premises)* – Plaintiff slipped and fell down exterior iron staircase and sustained a traumatic brain injury. Evidence showed that the staircase violated the Westchester building code. We filed a motion for summary judgment arguing that while the code may have been violated, based on certain admission elicited from plaintiff at deposition, the violations were not the proximate cause of the accident. The court agreed and granted our client summary judgment.
- *Keizman v. Hershko, et al., Supreme Court, Nassau County (Legal Malpractice)* – Represented attorneys in a legal malpractice/aider and better case in which the plaintiff claimed that attorneys conspired with their fraudster clients. Obtained pre-answer dismissal of complaint.
- *Stewart v. Kershko, Supreme Court, Kings County (Legal malpractice)* – Represented an union-appointed lawyer in a legal malpractice case. Obtained Stipulation of Discontinuance after filing motion to dismiss based on application of Duty of Fair Representation standard.
- *Gould v. City of New York, et al., Supreme Court, Kings County (Maritime Law)* – Represented the City of New York and Brooklyn Navy Yard in a wrongful death case in which the plaintiff’s decedent was killed while repairing a vessel dry-docked at Navy Yard. The plaintiff asserted Labor Law 200, 240 and 241 claims. Case settled after mediation.

- *Reyderman v. Meyer Berfond Trust, et al.*, Supreme Court, Appellate Division, Second Judicial Department—Represented a bank (tenant) in a third-party action commenced by a building-owner (landlord) seeking contractual indemnity based on lease agreement, following slip and fall on adjacent sidewalk. The landlord moved for summary judgment against the bank on the issue of contractual indemnity. We opposed, citing the absence of a contractual duty and that the locus in quo was not within the “demises premise.” After oral argument, Appellate Division affirmed trial court.

## Awards

## Awards

- AV® Preeminent™ Rated by Martindale-Hubbell