THE PLAINTIFF'S PERSONAL INJURY ACTION

IN NEW YORK STATE

EDITOR-IN-CHIEF
PATRICK J. HIGGINS, ESQ.

VOLUME ONE

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PREFACE

Attorneys used to dabble in plaintiff's personal injury work; it was not overly complex. Files fit in a briefcase, and trials finished in a day or two. Pre-trial discovery as we know it was minimal. Those days are now long gone—if they ever truly existed.

Today, a plaintiff's personal injury attorney must master special needs trusts, structured settlements, Medicare and Medicaid liens, health insurance subrogation, bankruptcy, *Frye* and *Daubert* motions, post–*Burns Kelly* calculations, CPLR Articles 50-A and 50-B hearings, and demands for confidentiality agreements. And that is before learning how to prepare, try, or win a case—and how to shepherd a client through the process.

We created the *Treatise on Plaintiff's Personal Injury Actions*—the original working title—to enhance the substantive knowledge and trial skills of the plaintiff's personal injury attorney in New York. We also wanted to answer the difficult and time-consuming practical questions in this area of law.

To aid in our task, we turned to attorneys and judges in New York State known for their skill and achievement. We also reached out to nationally recognized experts in trial practice and jury selection. The result is 43 chapters covering everything from retaining a client through the substantive law of plaintiff's personal injury, evidence, winning trial themes, and appeal. The *Treatise* also contains a law practice management chapter—a key requirement for today's overbooked practitioner.

It took two years to bring this *Treatise* to press. We updated it continuously. And, at some point, we had to stop. The law will continue changing, and we will supplement the *Treatise* accordingly. If a useful topic is not covered, contact us at the address below.

It has been a privilege working with the *Treatise* authors and the New York State Bar Association publications staff. They poured valuable time and effort into this work. We thank them.

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A 1984 graduate of the University of Buffalo School of Law, Mr. Higgins has practiced as a litigator for 23 years. He is Board Certified by the National Board of Trial Advocacy in Trial Practice[1] and is a graduate of the National Institute of Trial Attorneys' Master Advocate Program.

Since 2003, Mr. Higgins has edited and authored the *New York Lawyer's Deskbook* Chapter "Preparing for and Litigating the Plaintiff's Personal Injury Action in New York," published annually by the New York State Bar Association.

Mr. Higgins created and planned the New York State Bar Association's 2006 seminar "Managing Tough Issues in a Personal Injury Case," held across New York State. He has also chaired and moderated NYSBA's statewide seminars on "Litigating *Kumho Tire*, *Daubert* and *Frye* in State and Federal Courts." He was a member of the editorial board of the New York State Trial Lawyers Association publication *Bill of Particulars* (1999–2004). A frequent contributor to that publication, he was the author of a monthly column on trial practice and law analyzing recent opinions of the Appellate Division of the New York State Supreme Court, entitled "Third Department Review" (1999–2006).

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1 The NBTA is not affiliated with any governmental authority. Certification is not a requirement for the practice of law.

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Mr. Anderson is a frequent lecturer and has presented for Rensselaer Polytechnic Institute, the New York State Trial Lawyers Association, American Society of Safety Engineers, Capital District Trial Lawyers Association, New York State Bar Association and, American Association for Justice. He has also lectured at programs on child restraint for the Capital Region Safekids Coalition and the Albany County Traffic Safety Awareness Committee.

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Mr. Ford has practiced law with Thuillez, Ford, Gold, Butler & Young and its predecessor firms for over 30 years. He represents various insurers and national corporations in serious personal injury matters, including claims involving negligence, products liability, medical malpractice, premises liability and civil rights claims. He received his B.A. from Boston College, *summa cum laude* and was a member of Phi Beta Kappa, and his J.D. from Albany Law School.

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1 The National Board of Trial Advocacy is not affiliated with any governmental authority. Certification is not a requirement for the practice of law in the State of New York and does not necessarily indicate greater competence than other attorneys experienced in this field of law.

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David Paul Horowitz, Esq., has litigated in New York courts for 20 years as a plaintiff's personal injury attorney. Recognized in the 2007 and 2008 *New York Super Lawyers Metro Edition*, he is the author of the treatise *New York Civil Disclosure*, a LexisNexis Answerguide that is revised and reissued annually, the 2008 Supplement to *Fisch on New York Evidence*, the annual "Surveys in Evidence and Disclosure" for the *Syracuse Law Review*, as well as the monthly column, "Burden of Proof," on disclosure and evidence in the New York State Bar Association *Journal.* Mr. Horowitz teaches New York Practice, Evidence, and Electronic Evidence & Discovery at Brooklyn, New York and St. John's Law Schools. In addition to programs in civil practice, evidence, disclosure, and settlements at the Judicial Institute, he lectures statewide on these and other topics on behalf of numerous bar associations and for law firms and legal departments. Mr. Horowitz received a B.A. from Lehman College, City University of New York and a J.D. from Fordham University School of Law. He may be reached at 212.244.5600 (office), 914.424.1113 (cell phone), david@newyorkpractice.org or david.horowitz@brooklaw.edu.

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Robert A. Hyman is the managing partner at the Law Offices of Robert A. Hyman, P.C., in Pleasantville, New York. He concentrates his practice in the representation of the victims of nursing home and elder care neglect and abuse, medical malpractice, automobile accidents, negligence, construction accidents and premises liability. Mr. Hyman is a President's Club member of the Association of Trial Lawyers of America and a member of the New York State Trial Lawyers Association and the New York State Bar Association. Mr. Hyman is also a member of the National Citizens Coalition for Nursing Home Reform, the Long Term Care Community Coalition, Friends and Relatives of Institutionalized Aged, and the American Medical Directors Association. Admitted to practice in both New York and Massachusetts, Mr. Hyman is a *cum laude* graduate of Vermont Law School, and holds a master's degree in cell and molecular biology from the State University of New York at Buffalo. He has written and lectured on nursing home negligence in New York.

E. STEWART JONES, JR., ESQ.

E. Stewart Jones, Jr. graduated from Williams College in 1963 and Albany Law School in 1966, joining the firm of E. Stewart Jones, PLLC,

in Troy, N.Y. following graduation. His practice concentrates on the representation of victims in personal injury and wrongful death cases of all kinds and in the defense of major criminal cases in all federal and state courts. Mr. Jones is a fellow of the International Academy of Trial Lawyers, the Inner Circle of Advocates, the International Society of Barristers and the American College of Trial Lawyers. He is also a Diplomate of the American Board of Trial Advocates and the American Board of Professional Liability Attorneys. He is a Fellow of the American Board of Professional Liability Attorneys, the American Bar Foundation and the New York State Bar Foundation. Mr. Jones has been listed in the *Best Lawyers in America* from the first through the current editions, is listed in *Who's Who in American Law* and *Who's Who in America*. He was named one of the top 25 attorneys in the Hudson Valley in October 2007 and one of the top 10 lawyers in Upstate New York in *Super Lawyers Magazine*. Active in civic and community affairs, he has served on many boards of trustees and directors, including the University Foundation at Albany, the Albany Academy, Albany Law School and the New York State Trial Lawyers Association, among many others, and has chaired numerous capital campaigns and annual funds.

Mr. Jones is the recipient of the New York State Bar Association's Criminal Justice Section's Outstanding Practitioner Award (1980), the Albany Academy Distinguished Alumnus Award (2002), the Albany Law School Trustees Gold Medal (2003), Law Day 2005—Equal Access to Justice Award from the Legal Aid Society of Northeastern New York, Partners in Literacy Award—Literacy Volunteers of Rensselaer County (2005), Capital District Trial Lawyers Association—Daniel Mahoney Memorial Charter President's Award (2006). Mr. Jones has also been honored as a Fellow of the American Board of Criminal Lawyers. He is Board Certified as both a Civil Trial Advocate and as a Criminal Trial Advocate by the National Board of Trial Advocacy. He has authored numerous articles and chapters in a broad variety of trial advocacy books, and lectured extensively throughout the state of New York on all facets of personal injury lawsuits.

LESLIE DEBRA KELMACHTER, ESQ.

Leslie Kelmachter has a proven track record of success in achieving multi-million-dollar results for clients in all areas of personal injury, medical malpractice and defective product cases. Well known in the New York legal community for her outstanding work in the courtroom, she is a leader in New York's legal profession. She has successfully tried cases in

a variety of matters including faulty construction, missed medical diagnoses, lead poisoning, toxic chemical exposures, premises liability and wrongful death and shares her expertise through leadership in many professional organizations.

Ms. Kelmachter served in the prestigious position of Chair for the Tort Litigation Committee, Association of the Bar of the City of New York and on that Association's Committee on the Judiciary. She is also on the Board of Directors of the New York State Trial Lawyers Association and for many years chaired its Annual Continuing Legal Education Seminar, "DECISIONS." She is a frequent lecturer and teacher on various topics in personal injury and medical malpractice law for bar groups, including the New York State Bar Association, New York State Trial Lawyers Institute and the City Bar Association.

Ms. Kelmachter has extensive courtroom experience in state and federal courts and takes pride in the results she has obtained for injured people and their families.

She received her law degree (J.D.) at Albany Law School, Union University and her undergraduate degree (B.A. *magna cum laude*) at the State University of New York.

DANIEL KRAMER, ESQ.

Daniel Kramer is a sole practitioner in New York City, concentrating in personal injury litigation. Mr. Kramer is an Adjunct Professor of Law at St. John's School of Law, where he has taught Legal Medicine since 1999. Prior to this, he taught a course in Medical Malpractice as an Adjunct Professor of Law at New York Law School for eight years. Mr. Kramer graduated *summa cum laude* with a B.A. degree from Syracuse University and graduated in the top 2% of the class from St. John's School of Law. He is a former partner of Kramer, Dillof, Tessel, Duffy & More, a personal injury litigation firm with an emphasis in Medical Malpractice and a former partner of DiJoseph & Gluck, a firm concentrating in personal injury litigation and appeals.

Mr. Kramer served as a pro bono attorney for victims who filed claims for compensation from the Victims Compensation Fund from September 11, 2001 until July 15, 2004. During this time period, he filed more claims pro bono than any other attorney or firm in the country, and was recognized for this in an article by the *New York Times* and honored by *Lawyer's Weekly* as one of the Ten Best Attorneys for the Year in 2004. Mr.

Kramer is a frequent lecturer for organizations including the New York State Trial Lawyers Association, New York State Bar Association and Practising Law Institute. He is the co-author of several books including *Medical Malpractice*, *Editions 4 and 5* (published by P.L.I.), *Medical Malpractice Discovery and Trial*, *Edition 6* (published by P.L.I.) and *Evidence in Negligence Cases*, *Editions 6 and 7* (published by P.L.I.), as well as the author of numerous articles, including monthly columns published in the *New York Law Journal* and other legal trade publications. He received the Bergen County "Salute the Champions" award for his work with organizations that help handicapped persons.

ROBERT E. LAHM, ESQ.

Robert E. Lahm, of the firm Robert E. Lahm, PLLC, concentrates his practice on personal injury, medical malpractice, products liability, and all other torts and trial law. Admitted to practice in the State of New York and the State of Pennsylvania, the Federal District Courts and the Federal Second Circuit Court of Appeals, he is a Board Certified Civil Trial Advocate. Mr. Lahm is a Past President, Director and one of the founders of the New York State Academy of Trial Lawyers. He is also Co-Chair of the Fifth District Jury Project, Co-Chair of the Fifth Judicial District Task Force and serves on the Board of Directors of the New York State Trial Lawyers Association. Mr. Lahm is a Past President of the New York State Trial Lawyers Association and Past President of the Upstate Trial Lawyers Association. He has lectured widely on topics as diverse as products liability, opening statements and jury selection, trial techniques, trial practice and anatomy. He is listed in *The Best Lawyers in America, 1997–Present*, and recently listed as one of The 2008 *New York Super Lawyers Upstate* edition. A former Adjunct Associate Professor, Department of Medicine, S.U.N.Y. Health and Science Center, Mr. Lahm was a *magna cum laude* graduate of Fairleigh Dickinson University and received his Juris Doctor from Syracuse University College of Law. He is a member of the American Association of Justice, the New York State Bar Association, the New York State Academy of Trial Lawyers, the Onondaga County Bar Association, the Oswego County Bar Association, the Civil Justice Foundation and the Women's Bar Association of New York.

PAUL A. LEVINE, ESQ.

A member of the law firm Lemery Greisler, LLC, in Albany, New York, Paul A. Levine concentrates his practice on bankruptcy, creditors' rights and commercial litigation. A graduate of George Washington Uni-

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KEVIN J. MACDONALD, ESQ.

Kevin J. MacDonald is a Principal Court Attorney with the New York State Court of Claims. He provides counsel to the Clerk's Office and its staff regarding court operations, procedure and jurisdiction as well as information regarding Court of Claims practice and procedure to attorneys and pro se litigants. He also performs legal research and writing services for the court's judges and supervises the court's pro se unit and library. He is a panel member of the Unified Court System's Anti-Discrimination Panel and also scores bar exam essays for the New York State Board of Law Examiners. Prior to his position as Court Attorney, he was an Appellate Court Attorney for the Appellate Division, Third Department, Law Clerk to a Court of Claims Judge; and a Law Clerk to an Associate Judge of the Court of Appeals. He received his B.A. from State University of New York at Albany and his J.D. from Vanderbilt University School of Law.

ARTEMIS H. MALEKPOUR, ESQ.

Artemis H. Malekpour is a partner in North Carolina's national trial consulting firm of Miller Malekpour & Ball, specializing in focus groups, case strategy and jury selection. She holds a B.A. in psychology from the University of North Carolina at Chapel Hill, a master's degree in Healthcare Administration from the University of North Carolina at Chapel Hill School of Public Health, and her J.D. degree with honors from Duke University School of Law. She is a member of the Orange County, 15B Judicial District, North Carolina and American Bar Associations, the North Carolina State Bar, the North Carolina Academy of Trial Lawyers, the American Association for Justice, and the American Society of Trial Consultants.

PATRICK A. MALONE, ESQ.

Patrick A. Malone, a principal of Patrick Malone & Associates, P.C., has devoted his practice to working on behalf of seriously injured people, representing them in lawsuits against hospitals, doctors, drug companies, government agencies, and other defendants. A 1984 graduate of Yale Law School, Mr. Malone clerked with U.S. District Judge Gerhard Gesell in Washington for one year before starting his law practice. He is a member of the Inner Circle of Advocates, and a Fellow of the International Academy of Trial Lawyers. A past president of the Trial Lawyers Association of Metropolitan Washington, D.C. (2005–2006), Mr. Malone is a recipient of that organization's "Lawyer of the Year" award. He has been recognized as a leader in the field by the *Lawdragon 500 Leading Lawyers in America* (2008), *The Best Lawyers in America* (2006 edition to present) and the *Lawdragon 500 Leading Plaintiff Lawyers in America* (2007). Mr. Malone is co-author of the book *Rules of the Road: A Plaintiff Lawyer's Guide to Proving Liability* (Trial Guides 2006), which has been praised by leading plaintiff's lawyers as "must reading" for both experienced and novice trial lawyers.

Mr. Malone is a Certified Civil Trial Advocate of the National Board of Trial Advocacy. He is a member of the American Law Institute and served on the National Academy of Sciences' Panel on Science, Technology and Law from 2000 to 2006. Mr. Malone is a frequent lecturer at continuing legal education programs for lawyers, and he has lectured at grand rounds at Yale–New Haven Hospital and has spoken to others doctors' groups. He has written articles for *Trial*, *Litigation*, *The American Scholar* and the *Washington Post*, among others. His notable appellate cases include *Benedi v. McNeil-PPC Inc.*, 66 F.3d 1378 (4th Cir. 1995) (affirming $8 million award for Malone's client against Tylenol manufacturer for acetaminophen-induced liver failure). At Yale, he was an editor of the *Yale Law Journal* and won the Harlan Fiske Stone Prize and Potter Stewart Prize for best moot court efforts, along with the C. LaRue Munson Prize for legal clinic work. Before attending law school, Mr. Malone was a journalist, writing for United Press International and the *Miami Herald*. He was a finalist for the Pulitzer Prize in 1980 for a series of articles he co-authored, titled "Dangerous Doctors." Other journalism awards he received were from the Newspaper Guild, American Bar Association, Sigma Delta Chi, National Headliners Club, American Academy of Family Physicians and the Florida Medical Association. Malone received his B.A. in 1972 from the University of Kansas, *summa cum laude*, Phi Beta Kappa.

DEBRA MILLER

Debra Miller is a partner in North Carolina's national trial consulting firm of Miller Malekpour & Ball. Her trial consulting expertise comes from her background in marketing, advertising, persuasion and communications as applied to decision making. She has worked on a wide variety of civil and criminal cases across the country, providing strategy, jury selection, jury group research, advocacy skills, and post-trial interviews and analyses. She has taught at the law schools at the University of North Carolina, Campbell and Duke, and for such groups as the American Association for Justice (formerly ATLA), ATLA-New Jersey, and the North Carolina Academy of Trial Lawyers.

HENRY G. MILLER, ESQ.

Henry G. Miller is the senior member of the White Plains, New York, law firm of Clark, Gagliardi & Miller, P.C. Mr. Miller's trial work has usually been for plaintiffs in civil cases. A graduate of St. John's College (1952) and St. John's Law School (1959), Mr. Miller is a Past President of both the Westchester County Bar Association and the New York State Bar Association. He is a Past Regent of the American College of Trial Lawyers, a Past Director of the International Academy of Trial Lawyers, a Past Director of the New York State Trial Lawyers Association and a Fellow of both the American and New York Bar Foundations. Mr. Miller was appointed by Governor Mario Cuomo to chair the Commission on Local Government Ethics. He was appointed by Governor George Pataki to be a member of the Committee on Cameras in the Courtroom.

Mr. Miller has frequently appeared on television and radio. He often lectures at law schools and at Bar Associations on all aspects of trial practice. He is the author of *Settlements* in the Art of Advocacy series as well as the editor of the *New York Practice Guide on Negligence*, both published by Matthew Bender, and most recently, *On Trial: Lessons from a Lifetime in the Courtroom*, published by ALM Publishing.

A former Adjunct Professor of Law at St. John's Law School, Mr. Miller has written the "Ethics" chapter in the American Trial Lawyers Association's text on plaintiffs' personal injury litigation titled *Atla's Litigating Tort Cases*. He is a past recipient of the Pace University School of Law Distinguished Service Award.

STEVEN E. NORTH, ESQ.

Steven E. North, of Steven E. North, P.C., New York, NY, concentrates his practice in medical malpractice. He received his J.D. from Brooklyn Law School and LLM from New York University School of Law. Formerly an Assistant District Attorney for New York County in the Homicide Bureau, he was also Special Assistant Attorney General Bureau Chief. Mr. North is a referee for the New York State Commission on Judicial Conduct, a member of the Bench and Bar Medical Malpractice Committee of the New York County Supreme Court, and a former member of the Board of Directors of the New York State Trial Lawyers Association and the Governor's Judicial Screening Committee. He is a mediator for the U.S. District Court, Southern District of New York, and a member of both the Advisory Committee on Civil Litigation, Practising Law Institute (PLI) and the Million Dollar Advocates Forum.

Mr. North's law school teaching affiliations include: New York University (Judge, Appellate Argument; Alumni Advisor); Cardozo School of Law (Faculty, Intensive Trial Advocacy Program); Fordham Law School (Roscoe Pound Institute Lecture); Brooklyn Law School (Bridge the Gap Programs). A frequent lecturer, he has presented for New York State Bar Association, Mt. Sinai School of Medicine, Grand Rounds, Jacobi Hospital, New York State Trial Lawyers Association, PLI, Lorman, and the New York County Bar Association. His publication credits include: "Damages Update," *Trial Lawyers Quarterly*, N.Y.S.T.L.A. (1991-present) "North's Ninety-Nine Pointers on Advanced Deposition Practices, Use of Experts in Medical Malpractice Cases," *New York Law Journal*; and *Managing the Multi-Million Dollar Lawsuit*.

KEVIN T. O'BRIEN, ESQ.

Kevin T. O'Brien is a structured settlement broker with Secure Settlements LLC in New York City. He is also an attorney, formerly with the law firm of Shearman & Sterling. He received his J.D. from Boston College Law School and an LLM in taxation from New York University School of Law. He is accredited by the New York State Continuing Legal Education Board to give lectures on structured settlements, and he lectures frequently to judges and attorneys on how to protect plaintiffs in structured settlements.

MARY ELLEN O'BRIEN, ESQ.

Mary Ellen O'Brien is a solo practitioner who has focused her practice in appellate advocacy of New York appeals and appellate motion practice since 2001. She is responsible for all phases of taking, perfecting and arguing appeals as well as preparation of pre- and post-trial substantive motions. She serves of counsel to appellate, insurance defense and plaintiff's firms. A 1999 graduate of St. John's School of Law, she is admitted to practice in the state of New York. A former Second Judicial Department court attorney, Ms. O'Brien has served as in-house appellate counsel for multifaceted insurance defense litigation firm with a concentration in Labor Law, Construction, Personal Injury Defense, and Contract Law. Ms. O'Brien is also a member of several legal and professional bar associations including the Women's Bar Association of Nassau County, Nassau County Bar Association, Columbian Lawyers' Association of Nassau County, Catholic Lawyers' Association of Nassau County, and the New York County Lawyers' Association, where she is a member of the appellate practice committee, as well as the New York State Bar Association. Before joining the law profession, Ms. O'Brien, a former Peace Corps volunteer, had a long career as investment analyst and portfolio manager for many well-known Wall Street investment-banking institutions.

MICHELLE LECLAIR PANICCIA, ESQ.

Michelle LeClair Paniccia graduated, *cum laude*, from Thomas M. Cooley Law School in 1995. Thereafter, she was employed by Unum, First Cardinal Corporation and in 2001 joined the New York State Workers' Compensation Board. As a Senior Attorney in the Appellate Review Division, Ms. Paniccia reviews appeals, conducts research and prepares Memorandum of Board Panel Decisions, many of which involve issues surrounding Workers' Compensation Law § 29.

PAUL J. PENNOCK, ESQ.

Paul J. Pennock is Chief of the Pharmaceutical and Medical Device litigation department at Weitz & Luxenberg, one of the country's premier mass tort pharmaceutical and medical device litigation firms. His department has been responsible for settlements and verdicts totaling over $1 billion over the course of the past 16 years. Mr. Pennock is directly responsible for all aspects of supervising a large national litigation department involving multiple trials, all offensive and defensive discovery, litigation strategy, hearings and all motion practice. He has served as liaison

counsel, plaintiff steering committee member and/or leading plaintiffs counsel in numerous New York state court and federal MDL mass tort litigations, including the following: New Jersey Propulsid litigation; New York Rezulin Litigation; New York State Breast Implant Litigation; Philadelphia Baycol Litigation; the New York ReNu with MoistureLoc Litigation; Guidant MDL Plaintiff's Steering Committee; and Co-lead Counsel for the MDL Seroquel Plaintiff's Steering Committee. Mr. Pennock has handled numerous "bellwether" trials and science hearings in both state and federal courts. He has been honored in *The New York Best Lawyers*, Mass Torts, for 2005, 2006, 2007 and 2008.

GARY B. PILLERSDORF, ESQ.

Gary B. Pillersdorf is a Board Certified Civil Trial attorney practicing in New York City. He has over 35 years of courtroom experience, having taken over 350 verdicts, including 28 verdicts over $1 million. He is the principal attorney of Gary B. Pillersdorf & Associates, P.C., practicing in courtroom litigation.

Mr. Pillersdorf is currently Dean Emeritus of New York State Trial Lawyers Continuing Legal Education Institute. He is the author of the highly acclaimed textbook *New York Motor Vehicle Accidents*, published by James Publishing, and is a frequent contributor to *TRIAL Magazine*. He has also authored a chapter on "Case Selection" in *Litigating Tort Cases*, Thomson-West Publishers 2003.

A highly sought after speaker, Mr. Pillersdorf has lectured throughout the nation. He teaches courses in Trial Advocacy, Medicine for Lawyers and Courtroom Techniques in New York. He is a past president and current member of the Melvin Belli Society, is a member of the Million-Dollar Advocates Forum, and is included in *Who's Who in American Law* and is a "Super Lawyer"—Top Lawyers of New York. He is the senior New York State representative to the State Delegates Committee of the American Association of Justice (formerly ATLA) and has served as chair of their Motor Vehicle Collision, Highway and Premises Liability Section. A winner of the prestigious Mel Award as National Trial Lawyer of the Year, Mr. Pillersdorf is the only Northerner to win the War Horse Award from the Southern Trial Lawyers Association. He has handled numerous high-profile cases including several that were the largest verdict in the state for the year in which they were tried, and has tried many cases against municipalities.

JASON J. PLATT, ESQ.

Jason J. Platt is a partner in the Law Office of Robert A. Hyman, PC, a/k/a Hyman & Platt in Pleasantville, New York, where he manages the Litigation Department. His practice is concentrated in personal injury matters, and since 2004 has focused almost exclusively on nursing home, hospital, assisted living facility, and home care liability matters. An active member of the American Association for Justice and Litigation Group, the New York State Trial Lawyers Association, and the New York State Bar Association, Mr. Platt also belongs to the National Citizens' Coalition for Nursing Home Reform, the Long Term Care Community Coalition, Friends and Relatives of the Institutional Aged, and the American Medical Directors Association. Mr. Platt has lectured on, and co-authored, the following papers: "Civil Prosecution of a Nursing Home Case" the Professional Education Systems Institute; "Nursing Home Neglect and the Regulations in New York" for Lorman Education Services; and "Case Intake, Investigation, Pleadings, and Disclosure" for the Suffolk County Bar Association.

A *cum laude* graduate of the State University at Geneseo with a B.A. in Economics, Mr. Platt received his J.D. from Brooklyn Law School, where he was a member of the Moot Court Honor Society. His practice encompasses the five boroughs, surrounding counties, and upstate New York.

MARK A. POWERS

Mark Powers, President and Founder of Atticus, has been coaching trial lawyers for nearly 20 years. Thirty-five hundred attorneys have gone through his training and 1,200 through his intensive Practice Builder or coaching programs. Trial lawyers that work with Mr. Powers typically increase their incomes by 30% in the first 12 months, while decreasing their time in the office by 10%–15%. Graduates of his programs have greater control over their practice, experience less stress in their lives, and find that they are taking better care of their clients.

Mr. Powers is a Master Certified Coach and has been a featured speaker for many state trial lawyer programs; he is an international speaker who has worked with members of the Law Society of Scotland, the Canadian Bar Association, the American Bar Association and bar associations in Arizona, Florida, Massachusetts, Mississippi, New York and other states. He co-authored *The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners*, published by The Florida Bar. His marketing column is syndicated with bar associa-

tions nationally and he is a featured marketing writer for *Lawyers, USA*. Mr. Powers has also been featured in publications such as *The Commentator, American Bar Association Journal, Florida Bar News*, *Massachusetts Bar Association Lawyers Journal,* and many others.

Mr. Powers previously served as the chief executive officer and president of a multi-million-dollar, privately held company, and as a corporate manager in a Fortune 500 company based in Connecticut. A native of Massachusetts, he has a master's degree from Northeastern University in Boston. His undergraduate studies include a bachelor's degree in economics.

JAMES B. REED. ESQ.

James B. Reed is a trial attorney at the Ziff Law Firm of Elmira, New York, where he is the managing partner, concentrating his practice in the areas of personal injury and medical malpractice. A 1986 graduate of Dickinson School of Law, he is a member of the Multi-Million Dollar Advocates Forum, New York State and American Bar Associations, the New York and Pennsylvania Trial Lawyers Associations, the New York Academy of Trial Lawyers and the American Association for Justice. Admitted to practice in New York and Pennsylvania, Mr. Reed was designated as a "Super Lawyer" in the area of personal injury plaintiff attorneys.

Active in the community, he is currently the President of the Soaring Capital Soccer Club, a regional travel soccer club, has served on the Board of Directors for the Arnot Art Museum, the Rockwell Art Museum and the Chemung County SPCA.

Mr. Reed lectures frequently and has been published in the New York State Bar Association *Journal*.

JOAN LENSKY ROBERT, ESQ.

Joan Lensky Robert is a member of Kassoff, Robert & Lerner LLP, a law firm in Rockville Centre, New York, practicing exclusively in the areas of elder law and disability law. She is an honors graduate of Skidmore College, the University of Pennsylvania, and a *summa cum laude* graduate of Touro College School of Law, where she was the recipient of a Deans Fellowship and valedictorian of the part-time division. A member of the Executive Board of the Elder Law Section of the New York State Bar Association, she served as Chair of the Section during the 2003–2004 term. She is a Director of the Nassau County Bar Association and the

Immediate Past Dean of the Nassau Academy of Law and a past Chair of the Elder Law/Social Services/Health Advocacy Committee of the Nassau Bar. A member of the Legal Advisory Committee of the Long Island Alzheimer's Foundation, Ms. Robert was honored for outstanding service in 1997. She was also honored for her outstanding service to Project Real in October 2001 and was a member of the 2004 Class Leadership of the National Multiple Sclerosis Society, Long Island Chapter. She is the Secretary of the New York Chapter of NAELA, serves on the Board of Editors of *Bill of Particulars*, the publication of the New York State Trial Lawyers Association, and she is an editor of *Elder Law Attorney*, the quarterly publication of the Elder Law Section of the New York State Bar Association. She also served as a past editor-in-chief of the *New York Elder Law and Guardianship Newsletter*, West Publications.

A member of the New York State Bar Association Trusts & Estates Law Section, Ms. Robert serves as a member of the Continuing Legal Education Committee. She is an attorney member of the Surrogate Decision Making Committee and is a member of National Academy of Elder Law Attorneys. She co-wrote the chapter "Creative Advocacy" in the book *Guardianship Practice in New York State,* published by the New York State Bar Association. An author of numerous articles for community groups and professional groups concerning elder law and disability law and frequent lecturer to community groups on these topics, Ms. Robert also has served on the faculty of various Bar Association programs concerning Elder Law, Supplemental Needs Trusts and asset preservation, and has been an instructor at certified training programs for Guardians, Supplemental Needs Trust Trustees and Court Evaluators sponsored by the New York State Bar Association, the Nassau Academy of Law, St. John's University, the Association of the Bar of the City of New York and the New York County Lawyers' Association.

LAWRENCE N. ROGAK, ESQ.

Since graduating from Brooklyn Law School in 1981, Lawrence N. "Larry" Rogak has spent most of his career on the defense side of the insurance and liability area of the law, including two years working in the claims departments of insurance companies. A prolific writer, he has published hundreds of articles on insurance law practice and two books. The most recent, *Rogak's New York No-Fault Law & Practice*, is the first comprehensive guide to the subject ever published (a second, updated edition is due out in early 2009). He also wrote a general liability claims-handling guide, *Rogak's New York Insurance Law*. Mr. Rogak is the managing part-

ner of Lawrence N. Rogak LLC, an insurance defense law firm in Oceanside, New York, which is listed in *Best's Recommended Insurance Attorneys*.

Although Mr. Rogak is almost always on the defense side of the bar, the New York State Trial Lawyers Association invited him to write the no-fault section for its personal injury law treatise, released in January 2008. Mr. Rogak also publishes a daily insurance law newsletter, *The Rogak Report* (www.Rogak.com), which examins all the latest court decisions.

DANIEL R. SANTOLA, ESQ.

Daniel R. Santola, partner in the firm of Powers and Santola LLP, practices in the areas of medical malpractice, personal injury, construction accidents, and products liability law. A graduate of Albany Law School, he is the author of the chapters "Medical Equipment," in the *Products Liability Practice Guide*, "Construction Accidents," in the *New York Negligence Guide* (both Matthew Bender & Co.) and "Construction Accidents: How to Be a Winner," in *Tri-Cities Building and Construction Trades Council.* Since 1989, has been listed continuously in the *Best Lawyers in America*. He has been listed as well as in *Martindale-Hubbell Bar Register of Preeminent Lawyers*, *New York's Top Lawyers*, and *Who's Who in American Law*, *Who's Who in America*, *Who's Who in the World*, *Who's Who in Finance and Industry*, and *Who's Who in the East*, and awarded the highest rating (AV) by the *Martindale-Hubbell Law Directory.* Mr. Santola is a member of the New York State Trial Lawyers Association, the Albany County Bar Association, the American Board of Trial Advocates, Albany Law School's American Inns of Court, and the New York State Academy of Trial Lawyers. He has lectured and given legal seminars on labor law, construction, and precedents and statutes for personal injury litigators.

STEPHEN G. SCHWARZ, ESQ.

Stephen G. Schwarz has been the managing partner of Faraci Lange, LLP in Rochester, N.Y., since 1995. He focuses on personal injury and business litigation, including medical malpractice, serious auto accident cases, product liability and toxic tort and environmental contamination cases, practicing in both state and federal courts. A graduate of Albany Law School, Mr. Schwarz is a former confidential law clerk to Chief Judge Michael A. Telesca, U.S. District Court for the Western District of New York. He is a Fellow in the American College of Trial Lawyers and is Past President of the Rochester Chapter of the American Board of Trial

Advocates. He is also a member of the American Association for Justice, the New York State Bar Association (where he has served as Chair of the Committee on Judicial Administration), the Monroe County Bar Association (where he has served as chair of various committees and twice on the board of trustees), and is a Past President of the Genesee Valley Affiliate of the New York State Trial Lawyers Association. Mr. Schwarz has been awarded Martindale-Hubbell's highest rating and received the Special Service Award from the U.S. District Court, Western District of New York, in 1998, and the President's Award from the Monroe County Bar Association in 1995 for his work on the judicial candidate evaluation program. Mr. Schwarz has written articles for *Voir Dire* magazine, *TRIAL Magazine* and the New York State Bar Association *Journal*, as well as numerous essays on topics involving civil litigation for the *Rochester Democrat & Chronicle*. He is a frequent lecturer on a range of litigation topics at continuing legal education programs presented by the New York State and Monroe County Bar Associations.

ARTHUR J. SIEGEL, ESQ.

Arthur J. Siegel, a member of Bond, Schoeneck & King, PLLC, is a trial lawyer practicing in the areas of commercial, personal injury, product liability, medical malpractice, and environmental litigation in both state and federal courts. He also maintains an active appellate practice in both state and federal courts. He is Past President of the Legal Aid Society of Northeastern New York; Past Co-Chair, Board of Directors, Fund Equal Justice; President of Congregation Beth Emeth, Albany, New York; and recipient of the Community Builder's Award from the Council of Community Services of New York State, Inc. He is a member of the New York State Bar Association, for which he has led CLE programs in personal injury and product liability litigation, the Federal Bar Association, Northern District of New York, and the Albany County Bar Association.

HONORABLE PAUL A. VICTOR

Paul A. Victor is a Justice of the Supreme Court of the State of New York, Bronx County. A graduate of Fordham Law School, he was previously a Judge in the Civil Court of the City of New York, Bronx County; a partner with the law firm Dublirer, Haydon, Straci & Victor; an Arbitrator with the American Arbitration Association; Counsel to Assemblyman Roberto Ramirez; Counsel to Senator Martin Connor; Counsel to Assemblyman George Friedman; Commissioner of the Law Revision Commission; member of the Medical Malpractice Mediation Panel, Bronx County

Supreme Court; Board Member of the New York City Conciliation and Appeals Board; Arbitrator for the New York City Civil Court, Bronx County; Counsel to Assemblyman Alexander Chananau; partner in the law firm Russo, Stein & Carola & Victor; Assistant District Attorney in Bronx County; and a Law Assistant to Hon. Adrian P. Burke, New York Court of Appeals. Justice Victor is a Presiding Justice at the Regional Finals of the National Student Advocacy Competition sponsored by the Association of Trial Lawyers. A frequent lecturer, he presents for the New York State Trial Lawyers Association and the Bronx County Bar Association; he is a lecturer and faculty member at the Annual OCA sponsored New Judges Orientation Seminars. He was also a participating Justice in the OCA sponsored "Jury Trial Project" and a Judge for the New York City Law Department's moot court training program.

STEPHEN A. WEINBERG, ESQ.

Stephen A. Weinberg was born and raised in the Bronx, New York, received a B.A. from Stony Brook University in 1975 and a J.D. from Pace University Law School in 1979. After 5 years of private practice in White Plains, he joined the Court of Claims in 1985 as law clerk to Hon. Henry W. Lengyel. During his 24 years with the Court of Claims, he has served as law clerk to presiding Judge Christopher J. Mega, Judge Melvin L. Schweitzer and Judge Stephen J. Mignano, and also was the court's principal court attorney for a period of 10 years, during which he was responsible for the creation and development of the court's Web site, including a searchable database of the court's decisions.

HONORABLE LEONARD A. WEISS

The Honorable Leonard A. Weiss was the Presiding Justice of the Appellate Division, of the New York State Supreme Court, Third Department. A graduate of Albany Law School, Judge Weiss also served as Justice of the City Court of Albany (1977–1978), and Justice of the New York State Supreme Court (1978–1981) and served on the Appellate Division, Third Department (1981–1994). In 1994, he was appointed Commissioner for the New York State Public Service Commission. Judge Weiss has received a number of awards including: the 2005 Distinguished Alumni in Government Award from Albany Law School; the Felix J. Aulisi Award for Judicial Excellence and the Fair Administration of Justice from the New York State Trial Lawyers Association, the Award for Judicial Excellence and Leadership from the Association of Justices of the Supreme Court of the State of New York, and an honorary Doctor of

Law Degree from the College of Saint Rose. A presenter in CLE programs on arbitration and mediation, he is a member of the New York State Bar Association, the Albany County Bar Association, and the Association of Justices of the Supreme Court of the State of New York.

STEPHEN YALE-LOEHR, ESQ.

Stephen Yale-Loehr has practiced immigration law for more than 25 years. He is co-author of *Immigration Law and Procedure*, the leading multi-volume treatise of U.S. immigration law. Of counsel at Miller Mayer, LLP, in Ithaca, New York, he also teaches immigration and asylum law at Cornell Law School as an adjunct professor. Mr. Yale-Loehr received his B.A. in 1977 from Cornell University, where he was a Rotary exchange student to Japan, a College Scholar and Phi Beta Kappa. In 1981, he received his J.D. *cum laude* from Cornell Law School, with a concentration in international legal affairs; he was also editor-in-chief of the *Cornell International Law Journal*. After graduation, Mr. Yale-Loehr clerked for a federal judge. For the next four years, Mr. Yale-Loehr practiced international trade and immigration law at a large law firm in Washington, D.C. From 1986 to 1994, he was managing editor of *Interpreter Releases* and executive editor of *Immigration Briefings*, two leading immigration law publications.

Mr. Yale-Loehr is the co-author of many books, including *America's Challenge: Domestic Security, Civil Liberties and National Unity After September 11*; *Balancing Interests: Rethinking the Selection of Skilled Immigrants*; *J Vista Guidebook*; *Understanding the Immigration Act of 1990*; *Understanding the 1986 Immigration Law*; and numerous law review articles. He is a member of the New York and District of Columbia bars, and is admitted to practice before the U.S. Court of Appeals for the D.C. Circuit and the U.S. Supreme Court. He is a member of the Business Immigration and Investor Visa Committees of the American Immigration Lawyers Association (AILA). A frequent speaker and moderator at immigration law conferences, he has been quoted in national and local newspapers, radio and TV news reports, and has testified before Congress and as an expert witness. Mr. Yale-Loehr is listed in *Who's Who in America* and *An International Who's Who of Corporate Immigration Lawyers*. He is the 2001 recipient of AILA's Elmer Fried Award for excellence in teaching and the 2004 recipient of AILA's Edith Lowenstein Award for excellence in advancing the practice of immigration law.