



AARONSON RAPPAPORT

Aaronson Rappaport Feinstein & Deutsch, LLP



**2024
A YEAR IN
REVIEW**



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THANK YOU

We at ARFD want to spend a moment to thank our clients for placing their confidence and trust in us to exercise our collective legal acumen and experience to resolve their litigation and other legal matters in a timely and cost-effective manner, while achieving stellar results.



“The life of the law has not been logic; it has been experience.”

– Oliver Wendell Holmes

ARFD 2024 SUCCESS STORIES

Over the course of 2024, ARFD has successfully resolved hundreds of legal matters for its clients. The term “success” can be defined in different ways, but the most gratifying results are those that end in complete vindication for our clients. These types of successes occurred routinely in 2024 for ARFD clients at trials, on motions, and on appeals, across the greater New York area. Some are highlighted below.



To be a respected litigation firm, you have to be prepared to try any case. While not all cases are tried to verdict, at ARFD we pride ourselves in being prepared to try any case if the situation warrants, to verdict if needed. Some of our 2024 courtroom successes are highlighted below.

- **Suffolk County – Defense verdict on lack of informed consent.** Plaintiff claimed she was not informed that there was a risk of toe shortening, following a toe fusion surgery to address a bunion and pain. At trial, it was demonstrated that a reasonable person in plaintiff’s position would have agreed to the surgery given the plaintiff’s pain, despite the risk of toe shortening. The jury agreed and rendered a verdict for the defendant.
- **Suffolk County – Defense verdict for physician where negligence claimed during an electrophysiological study.** Plaintiff claimed the defendant was negligent when the femoral artery was nicked during the procedure, resulting in a pseudoaneurysm that required surgical repair. At trial, it was demonstrated that the procedure was performed appropriately, considering the doctor’s expertise and the technological limitations. This crucial argument effectively countered the plaintiff’s claim that ultrasound should have been used during the procedure.





- **Westchester County – Defense verdict for a pediatric gastroenterologist. Plaintiff sought 25-million dollars in damages for the infant-plaintiff.** Plaintiff claimed a failure to consider an anorectal malformation in a newborn at birth and, thereafter, when seen at three months of age by the defendant, and co-defendant pediatric group. Pre-trial, the plaintiff settled with the co-defendant hospital. At trial, plaintiff argued that for three weeks after commencing thickened feeds, the three-month old infant suffered from constant regurgitation, active constipation, and a severely distended abdomen. Plaintiff introduced photographs taken before and after the subject office visit with the defendant, arguing that they demonstrated chronic abdominal distention which, when combined with the alleged presenting complaints of constipation and regurgitation, mandated a differential diagnosis including anorectal malformation. Plaintiff claimed that such differential would have required the performance of a digital rectal examination, which would have discovered severe anal stenosis, and prevented a further 12-week delay in diagnosis by the remaining co-defendant. Plaintiff's expert argued that the collective delay in diagnosis led to development of a megacolon with colonic neuropathy; 'loss of chance' of the infant regaining complete continence by three years of age (at trial, the infant almost six years of age); the inability to achieve a 'leak-free life'; life-long bowel management; up to three additional surgeries; and lifetime psychological issues. At summations, plaintiff asked the jury to award 25-million dollars in damages. At trial, the defense was able to demonstrate that the infant-plaintiff likely had other relevant congenital anomalies associated with her condition, including megarectum and recto-vaginal fistula; that the documented purpose of the pediatric GI visit was only for an upper-GI issue; that photographs taken more than two days after the subject visit were not probative of whether abdominal distention existed on the day of the visit, and that the alleged distention seen on the photographs was caused by intermittent gas, not excessive accumulation of feces in the GI tract. In making these arguments, the defense presented experts, including a world-renowned surgeon, who operated on the infant and had never testified in court in his 40-year career. In addition, on cross-examination the defense was able to highlight that plaintiff's economist made a multi-million dollar error in projecting future medical care. The jury returned a 6-0 finding of no liability as to ARFD's client and the co-defendant. The plaintiff moved to set aside the verdict, which was denied.



- **Queens County – Defense verdict for a retinal specialist.** Plaintiff claimed the defendant was negligent by failing to timely diagnose and surgically treat plaintiff's retinal detachment for 22 days, despite referral from an ophthalmologist for suspicion of a retinal detachment. The plaintiff further alleged that this delay resulted in permanent and complete loss of vision in one eye. At trial, it was argued that the 'delayed' diagnosis was the result of a vitreous hemorrhage in the eye that blocked any view of the retina, thus making it impossible to diagnose the retinal detachment. Further, it was highlighted that after initially consenting to surgery to remove the hemorrhage and inspect the retina, plaintiff withdrew his consent because of business obligations, and that surgery failed due to plaintiff failing to follow post-operative instructions essential for the success of retinal detachment surgery.
- **New York County – Defense verdict for NYC Hospital and colorectal surgeon.** Plaintiff alleged defendants were negligent in failing to re-operate in the face of persistent post-operative symptomatology and a CT scan depicting a recurrent colovesicular fistula four months after surgery. Plaintiff claimed that the failure to operate at time of the CT scan resulted in a worsening of plaintiff's inflammation and abscess, requiring the need for a colostomy with subsequent reversal, subsequent resection, and development of hernias and weakened abdominal wall. At trial, it was demonstrated that the defendants' conservative management was appropriate, and that surgery was not indicated. It was further argued that the decision to take the plaintiff to the operating room by the subsequent treating surgeon, who was also plaintiff's trial expert, was ill-advised and led to plaintiff's subsequent complications and injuries.
- **New York County – Defense verdict for a gastroenterologist where seven-figure verdict requested.** Plaintiff claimed negligence during elective endoscopic polypectomy leading to perforation requiring multiple surgical repairs. Plaintiff also claimed lack of informed consent in failing to obtain permission to have the procedure performed by a visiting physician, and to broadcast the surgery to a remote medical conference. In addition, plaintiff alleged fraud and deceit; violations of the Education Law and General Business Law; and sought punitive damages. ARFD successfully moved to dismiss these ancillary claims prior to trial. At trial, it was effectively established that plaintiff was adequately consented from a variety of sources, despite medical documentation deficiencies and claims that certain office and hospital records were suspect; that endoscopy was a preferred and reasonable option, even for a complex polyp; and that the care rendered was within accepted standards. The jury rejected plaintiff's request for a seven-figure award, and returned a verdict in favor of ARFD's client, as well as the codefendants.



SUMMARY JUDGMENT MOTIONS

Equally important to a successful litigation firm is strong written advocacy. Well conceived and written motions can result in cases being discontinued, dismissed, or can limit the claims alleged, resulting in favorable resolutions. At ARFD, we are always thinking strategically during pre-trial litigation to position ourselves to make 'value-driven' dispositive motions. Motions are made when it is believed there is a good chance of disposition, or a narrowing of claims that will lead to a favorable resolution. In 2024, ARFD moved successfully in numerous matters throughout the greater New York area. Some of these motion successes are highlighted below.



- **Kings County- Dismissal for hospital and resident in high-exposure obstetrical wrongful death case, where plaintiff alleged new liability theory during pendency of motion.** It was alleged the defendants failed to properly treat a chronically hypertensive obstetrical patient during pregnancy, resulting in respiratory arrest, brain damage and subsequent death. Following discovery, defendants moved for summary judgment. Plaintiff opposed the motion by putting forth a sole theory of liability not previously pled. This was pointed out in the defendants' reply. In granting summary judgment, the trial court adopted the defense argument that it was improper for plaintiff to allege a new theory of liability during the pendency of a summary judgment motion.
- **Westchester County – Dismissal for hospital and physician's assistant where permanent nerve damage was alleged.** Plaintiff claimed the physician's assistant acted negligently when assisting on a left Achilles tendon repair, leading to significant nerve injuries. It was further alleged that hospital staff negligently monitored the plaintiff post-operatively, and prematurely discharged her, exacerbating the alleged nerve injuries. In granting the motion in its entirety, the Court found that plaintiff's expert failed to offer sufficient competent evidence to dispute the showing that the care by the hospital and physician's assistant was appropriate at all times.



SUMMARY JUDGMENT MOTIONS

- **Rockland County – Dismissal for hospital where plaintiff alleged permanent nerve damage to arm due to improper surgical positioning.** Following filing of a summary judgment motion supported by two detailed expert affirmations, plaintiff's counsel unexpectedly moved to be relieved as counsel. ARFD's motion was later granted without opposition by the now pro se plaintiff, who did oppose the co-defendant's motion and was successful in getting it partially denied.
- **Queens County – Dismissal on behalf of a hospital and cardiologist where COVID-19 and other procedural defenses raised.** Plaintiff alleged defendants failed to timely diagnose endocarditis, resulting in surgery to replace the affected cardiac valve, as well as the placement of a pacemaker, and a prolonged hospitalization. ARFD submitted a detailed expert affidavit from a cardiology expert, clearly explaining that plaintiff was properly evaluated at all times, and that at all patient encounters the plaintiff did not exhibit signs of endocarditis that should have led to further evaluation. In addition, defendants procedurally argued that that the Complaint was untimely, as the tolling provisions afforded under the Continuous Treatment Doctrine and COVID-19-related Executive Orders were inapplicable. Confronted with these compelling substantive and procedural arguments, plaintiff declined to oppose ARFD's motion, resulting in a dismissal of all claims as to ARFD's clients. Notably, plaintiff did oppose the co-defendant's motion, resulting in it being denied.
- **Bronx County – Dismissal on behalf of a hospital and its emergency room attending.** Plaintiff alleged the doctor and hospital failed to timely diagnose appendicitis, leading to a ruptured appendix. In granting the motion for summary judgment in its entirety, the Court held that the plaintiff failed to raise a triable issue of fact on the propriety of the defendants' care and treatment, also finding no causal relationship between the alleged injuries and the defendants' care. Further, the Court concluded that plaintiff's expert did not have the requisite training and experience to render an opinion on causation, and thus, was unable to dispute defendant's arguments.



SUMMARY JUDGMENT MOTIONS

- **Nassau County – Summary judgment for Emergency Room physician.** Plaintiff alleged a failure to appropriately run a code in the ER, resulting in permanent neurological injuries, as well as lack of informed consent. The defense brought to the Court's attention that plaintiff submitted a defective expert affirmation, and also failed to provide an unredacted and signed copy for in camera inspection. The Court adopted the defense's arguments in granting summary judgment. Plaintiff moved to re-argue, which was opposed. The Court granted re-argument and, upon doing so, adhered to its prior decision.
- **Kings County – Summary judgment granted in slip and fall case against hospital.** Plaintiff alleged the defendant failed to maintain a safe environment outside of the endoscopy suite, causing the plaintiff to fall and sustain injuries to her knee. ARFD successfully demonstrated on motion that the area was safe, and that plaintiff's knee injury pre-existed her fall. The Court declined to accept plaintiff's interpretation of radiology reports, granting summary judgment motion, thereafter denying plaintiff's motion to reargue.
- **Bronx County – Dismissal on behalf of a hospital in a wrongful death action.** Plaintiff alleged that the hospital failed to assess the elderly patient's risk for pressure ulcers and provide necessary interventions, leading to development of multiple pressure ulcers, further complications, sepsis, and ultimately her death. ARFD moved for summary judgment, supported by expert opinion that a sacral ulcer was present upon admission, subsequent ulcers were unavoidable due to the decedent's immobility and co-morbidities, and interventions were timely commenced. The Court rejected plaintiff's contention that the sacral ulcer was not documented until a day after admission; implying it developed, instead, during hospitalization, further finding that plaintiff failed to acknowledge that the wound healed during the hospitalization or that any deviation from standard care caused the subsequent ulcers to develop.



SUMMARY JUDGMENT MOTIONS

- **Queens County – Dismissal of all claims against hospital, obstetricians and neonatologist in brain damaged baby case, pursuant to the EDTPA.** It was alleged defendants failed to properly manage the plaintiff’s labor, after she arrived to the hospital in labor and COVID-19 positive, during the beginning months of the pandemic, causing the infant to suffer hypoxic-ischemic encephalopathy. ARFD submitted affirmations from hospital personnel detailing how the plaintiff’s treatment was impacted by the hospital’s response to the pandemic. The plaintiff opposed with an expert affidavit arguing that the treatment impacted by the hospital’s response to the pandemic must be the same treatment alleged to be negligent, further opining that the obstetricians did not meet the standard of care. The Court agreed with defendants’ arguments, conferring complete immunity to all defendants under the EDTPA, even though there was no causal connection between the response to the pandemic and the harm suffered. The Court refused to opine on whether defendants departed from good and accepted medical practice, as academic.
- **Kings County – Dismissal on behalf of podiatrist.** Plaintiff alleged defendant failed to properly perform surgery on plaintiff’s toes. In granting summary judgment, the Court found that while plaintiff’s expert was credible, the expert failed to adequately refute defendant’s contentions in rendering conclusory opinions. The Court further found that plaintiff improperly alleged liability theories not previously asserted.
- **Putnam County – Hospital dismissed in Erb’s Palsy case.** Plaintiff claimed that hospital and co-defendant obstetrical defendants were negligent in the labor and delivery of plaintiff, resulting in an Erb’s Palsy. ARFD moved for summary judgment, demonstrating that the management of the labor was not causative of the infant’s injuries, and that the delivery was managed by the co-defendants, the plaintiff’s private obstetrical providers. Plaintiff chose to only oppose the co-defendants’ motions, which were denied. The hospital was granted summary judgment.



SUMMARY JUDGMENT MOTIONS

- **Queens County – Summary judgment for hospital and cardiothoracic team.** Plaintiff claimed defendants negligently performed cardiothoracic surgery which was not indicated; caused a small vessel bleed during cardiothoracic surgery, and thereafter failed to recognize and correct the bleed prior to closure. The plaintiff was returned to the OR for repair later that evening. Through expert opinion, ARFD was able to demonstrate surgery was indicated; that small vessel bleeding was a known and accepted risk of the surgery that could occur in the absence of negligence; that plaintiff's expert's opinion that the bleeding should (or could) have been diagnosed before closure was purely speculative. In granting summary judgment, the Court found that plaintiff's expert affirmation failed to sufficiently rebut the defendant's expert affirmation, further finding it conclusory and failing to address all pertinent evidence.
- **Kings County - Summary judgment for hospital.** Plaintiff alleged a failure to diagnose an evolving appendicitis during an ER presentation. At the conclusion of discovery, a summary judgment motion was filed. It was argued that plaintiff being admitted temporal in time to another hospital for an appendicitis did not mean that malpractice occurred during the ER presentation to defendant a few days earlier. This was supported by expert opinion. Upon review of ARFD's motion papers, plaintiff elected to not oppose the motion, which was thereafter granted.
- **New York County – Hospital and internist granted discontinuance of all claims after moving for summary judgment in decade-old wrongful death case.** Plaintiff alleged defendants failed to diagnose a ductal cancer, which led to spread to the lungs, culminating in the patient's demise. After more than a decade of litigation, the plaintiff filed a Note of Issue, and defendants moved for summary judgment. After multiple requests for adjournments to oppose the motion, plaintiff's counsel moved to be relieved. This motion was granted. After giving the now pro se plaintiff almost a year to retain new counsel or proceed pro se, the plaintiff agreed to discontinue the lawsuit, vindicating the defendants.



SUMMARY JUDGMENT MOTIONS

- **Bronx County - Summary judgment for a medical center and its physician in a patient's rights case.** Plaintiff initially alleged, both in the complaint and to the NY press, that because of alleged violations of the patient's MOLST and Living Will, the patient was administered one dose of an antibiotic, thereby reversing the effects of alleged sepsis, and resulting in an additional month of pain and suffering prior to demise. Through litigation and on motion, it was demonstrated that the patient did not have sepsis upon presentation to the hospital. It was further demonstrated that neither the administration of one dose of antibiotic, nor any other initial interventions, were in contravention of the patient's MOLST or Living Will, or the proximate cause of the patient's pain and suffering, or demise. Plaintiff did not oppose the motion, and summary judgment was granted to all defendants.
- **Kings County – Summary judgment for hospital. Plaintiff did not refute defendant's causation argument.** Plaintiff alleged that the defendant's staff failed to prevent pressure ulcers, which progressed to Stage IV, became infected, and led to the patient's demise. ARFD, with the assistance of experts in Nursing and Vascular Neurology, demonstrated that the defendant's staff provided treatment within the standard of care, which prevented the patient from developing pressure ulcers during the hospitalization, further establishing that the sacral pressure ulcer for which plaintiff sought damages developed after discharge. Immediately following oral argument of the motion, the Court granted summary judgment, finding that plaintiff's expert failed to create a question of fact on proximate cause as it related to the pressure ulcer at issue in the litigation.
- **Nassau County – Summary judgment awarded to radiologist.** Plaintiff alleged the defendants failed to diagnose and treat necrotizing fasciitis during an Emergency Room visit that led to the death of a 67-year-old female 12 hours later.



SUMMARY JUDGMENT MOTIONS

- **New York County – Summary judgment for hospital and two cardiothoracic surgeons.** Plaintiff alleged malpractice during the performance of a robotic mitral valve repair, causing a dissection of the ascending aorta, and resulting in the need for repair with prolonged and difficult hospitalization. Based on the strength of ARFD’s motion papers, summary judgment was granted, dismissing the case against ARFD clients.
- **Kings County – Summary judgment for hospital.** Plaintiff alleged negligence during the administration of a transforaminal epidural steroid injection, leading to injury, and culminating in the patient demise after extended hospitalization. ARFD successfully moved for summary judgment, demonstrating no causal connection between the alleged hospitalization and the patient demise.
- **Bronx County – Summary judgment for orthopedic surgeon and hospital-based practice.** Plaintiff alleged fraud and unjust enrichment, claiming defendants fraudulently induced the patient to secure a surgical loan in connection with a spinal surgery. ARFD demonstrated that there was no evidence of fraud or unjust enrichment. The Court agreed with the defense arguments, rejecting plaintiff’s opposition and granting summary judgment.
- **Kings County – Case discontinued after summary judgment was filed.** Plaintiff alleged that stent was negligently placed in plaintiff’s leg, leading to migration to his heart a few weeks later, requiring tricuspid valve replacement and, later, placement of a pacemaker.
- **Kings County – Summary judgment for orthopedic surgeon.** In case where plaintiff alleged that negligence during surgery led to the development of a post-operative burn.



APPEALS

Appellate practice tends to be overlooked, as perfected appeals resulting in favorable decisions occur less often than favorable dispositions at trial or on motion. Nonetheless, a good appellate team is integral to a successful litigation practice. Strong appellate papers can make a plaintiff, even if successful in the lower court, re-consider settlement. Below are ARFD's decided appeals from 2024.

- **First Department - 41-page summary judgment denial reversed.** This matter involved claims of improperly performed cosmetic and functional nasal surgery and was aggressively litigated by plaintiff over seven years. The lawsuit initially alleged eight causes of action, including fraud and forgery, and sought punitive damages. ARFD successfully moved to have four causes of action dismissed on a CPLR 3211 motion. At the conclusion of discovery, a summary judgment motion was filed to dismiss the remaining four causes of action. In a 41-page decision, the New York County trial court summarily denied summary judgment to all defendants, and an appeal was taken. Following oral argument, and with jury selection three weeks away, ARFD moved for an emergent stay of trial. Plaintiff opposed the application. One week prior to jury selection, the application for a stay pending decision on the appeal was granted. The following week, the First Department issued a decision fully reversing the trial court's 41-page summary judgment denial. Plaintiff thereafter moved to re-argue the appeal, which was denied, putting an end to an almost eight-year litigation.



- **First Department – Grant of summary judgment sustained.** Grant of summary judgment in Bronx County. During the pendency of summary judgment proceedings, plaintiff abandoned the previously malpractice claims, proceeding solely on lack of informed consent. Defendants argued that aside from the standard of care being met, and lack of informed consent having been properly provided, any claimed nerve injury was due to an auto-immune disorder. The Supreme Court, Bronx County granted defendants' motion due to plaintiff's failure to offer expert opinion on causation. Plaintiff appealed. In unanimously affirming the dismissal, the First Department found that plaintiff failed to raise a triable issue of fact with a conclusory expert affidavit that failed to address a significant number of key assertions made by defendants' experts, including that the care was not a substantial factor in causing plaintiff's alleged injuries.



IN OTHER NEWS



In 2024, ARFD remained committed to supporting worthwhile causes and promoting diversity, while also continuing to be acknowledged as a ‘go to’ litigation firm.

- ARFD attorneys participated in a mock trial presentation at the annual JALBCA (Judges and Lawyer Breast Cancer Alert) symposium.
- ARFD supported and attending the Puerto Rican Bar Association Scholarship Fund Gala. The Puerto Rican Bar Association offers scholarships to law students from ABA-accredited law schools who demonstrate contributions or a commitment to the Puerto Rican or LatinX community.
- 17 ARFD attorneys named 2024 New York-Metro Super Lawyers and Rising Stars.
- 12 ARFD attorneys recognized in the 2024 edition of Best Lawyers.
- ARFD again recognized by U.S. News – Best Lawyers® as a National “Best Law Firm” in Health Care Law, as well as a New York City “Best Law Firm” in Medical Malpractice, Product Liability Litigation, Personal Injury Litigation and Health Care Law.

As we transition into a new year, ARFD wants to again thank our clients for their continuing business and we look forward to collaborating, and achieving even better results, in 2025!



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Aaronson Rappaport Feinstein & Deutsch, LLP

600 3rd Ave
New York, NY 10016
212-593-6700

www.arfdlaw.com

390 Old Country Rd
Garden City, NY 11530
516-281-9600