



McElhenny, Brian W.

Position: Partner

Co-Chair: Municipal and Government

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Location

Garden City, New York

Practice Areas

- [Appellate Advocacy](#)
- [Product Liability, Fire and Life Sciences](#)
- [Retail, Food, Beverage & Hospitality](#)
- [Construction Law](#)
- [Municipal and Government](#)

Admissions

New York, U.S. District Court for the Eastern District of New York, U.S. District Court for the Southern District of New York, U.S. Court of Appeals, Second Circuit



Biography

With over 90 appeals under his belt, Brian is a member of the firm's Appellate Practice Group. He also co-chairs the firm's Municipal and Government Practice Group. His practice focuses on complex personal injury defense and insurance coverage disputes with significant emphasis on municipal liability, premises cases, New York Labor Law and product liability.

Brian has more than three decades of experience defending clients in the courts on Long Island and in the New York City area in labor law construction and premises cases. He has tried more than 90 cases to jury verdict and argued 90 appeals before the Appellate Division in New York State. He has also argued several cases before the United States Second Circuit Court of Appeals. Brian has experience in all aspects of the defense of civil litigation from claim inception through discovery, depositions, motion practice, trial and appeal. Brian has published extensively about the primary assumption of risk defense in athletic and recreational activity injury claims.

Brian has prepared and argued appeals across New York State. He has an active mediation practice where he works with clients and their insurers to resolve claims at an early stage. His litigation skills result in clients seeking his representation in mediations and arbitration across New York. Brian was selected by the Appellate Division Second Department to be a special master to mediate civil cases on appeal.

Brian has significant experience defending retail businesses, as well as property owners, general contractors and sub-contractors against various tort claims, including New York's onerous Labor Law statutes. He has deep experience defending serious damage claims, including traumatic brain injury. However, his litigation skills are not limited to personal injury. Brian has successfully represented clients in commercial disputes, including defamation actions and claims of prima facie tort. Brian also represents a broad spectrum of product manufacturers and distributors in product liability matters. He has unique experience representing sprinkler manufacturers in significant property damage claims, as well as ladder manufacturers for alleged product failure.

In one example of Brian's municipal and governmental liability experience, he successfully defended the Town of Islip, New York, in a high-profile case involving a shooting at a town park. In another example, the 18-year old plaintiff was driving his car on a state road in Huntington, New York, when it slid on black ice and collided with another vehicle. He sustained a traumatic brain injury and was hospitalized for months. Brian successfully argued that the town was not liable, as the intersection was under the control of the state and there was insufficient evidence that the town breached its duty to maintain the roadway.

Brian appellate skills were evident in representation of a ladder company in a product liability suit. The client purchased the assets of the ladder manufacturer after it went out of business. After a motion for summary judgment was denied, Brian appealed the decision and the Second Department reversed it, dismissing the complaint. The court held that the successor company was not liable for the alleged ladder defect.



Brian has been awarded an AV rating from Martindale-Hubbell. He has also been selected for inclusion in New York Metro Super Lawyers and as one of Long Island's Top Legal Eagles.

He resides in Huntington, New York with his wife Kerin. Brian is active playing tennis and platform tennis at the Head of the Bay Club in Huntington Bay where he was President in 2015-2016.

Education

- St. John's University School of Law, J.D.
- Colgate University, B.A.

Honors

- Best Lawyers in America, 2026-2027, Personal Injury Litigation-Defendants
- Martindale-Hubbell Peer Review Rating: AV Preeminent
- Top Rated Lawyer in Litigation, American Lawyer Media and Martindale-Hubbell, 2014
- New York Metro Super Lawyers 2012-2017, 2020-2026
- Long Island's 2012 Top Legal Eagles

Professional Leadership

- Suffolk County Bar Association
- Nassau-Suffolk Trial Lawyers Association
- Member, Defense Association of New York



Representative Matters

Seegers v. Village of Mineola, Nassau Supreme Court

Brian represented the Village of Mineola in a slip and fall suit where plaintiff fell on ice at a Village parking lot in February 2014. Plaintiff alleged the Village was liable for negligent snow removal that created piles of snow that melted and refroze. Defendant's motion for summary judgment had been previously denied and affirmed on appeal to the Second Department. Plaintiff was a 61 year old nurse marketing employee who sustained a comminuted fracture of the left wrist which required open reduction and internal fixation. She also sustained a dislocated left patella and torn meniscus that required arthroscopic surgery. She alleged continuing disability with her knee and traumatic arthritis that would require knee replacement surgery. There was a \$136,000.00 worker's compensation lien and a settlement demand of at least \$500,000.00. The case was tried in Nassau Supreme Court in November 2020 under Covid-19 protocol before a jury of six, who returned a verdict in favor of the Village.

Batista v. Town of Islip, New York Supreme Court

The teenage plaintiff was shot by a gang member while watching a basketball game. He sustained a traumatic brain injury and blindness in one eye. The plaintiff sued, arguing that the town failed to provide adequate security and failed to take adequate measures to combat gang violence. Brian argued that the shooting was not foreseeable and that the town's decisions concerning security were protected by the governmental immunity doctrine. The judge granted the defendant's motion for summary judgment.

Schacker v. Town of Huntington, New York Supreme Court

The 18-year old plaintiff was driving his car on a state road in Huntington, New York, when it slid on black ice and collided with another vehicle. He sustained a traumatic brain injury and was hospitalized for months. The plaintiff sued the town and the state of New York for failing to maintain proper drainage, which he asserted caused ice to form at the intersection; there was a history of complaints of water problems at the intersection. Brian argued that the town was not liable, as the intersection was under the control of the state and there was insufficient evidence that the town breached its duty to maintain the roadway. The town's motion for summary judgment was granted by the Suffolk County Supreme Court.

Wass v. County of Nassau and Bauer Corporation, New York Appellate Division, Second Department 2017

On appeal, Brian successfully defended a company that purchased the assets of a defunct ladder manufacturer in a product liability action arguing that a successor company is not liable for the torts of its predecessor.



***Alnashmi v. Certified Analytical Group*, 89 AD 3d 10, New York Appellate Division, Second Department 2011**

The Appellate Division issued a landmark decision in favor of Brian's client, a decision that is regularly cited in premises liability cases. Brian argued that an out of possession landlord was not liable for a dangerous condition on the premises.

***Cortes v Town of Brookhaven*, 78 AD3d 642, New York Appellate Division, Second Department 2010**

Brian defended a town at trial in serious injury case where the jury apportioned fault to the Town and to plaintiff. On appeal Brian argued that the Town was entitled to contractual indemnity from its contractor, even though the contractor was not at fault and the Town was partially at fault. The Appellate Division agreed. Brian collected 90 % of the settlement back from the insurer of the contractor.

***Denaro v Rosalia and City of New York*, 59AD3d 584 Appellate Division Second Department 2009**

Brian defended his client in a hotly contested dispute between two neighbors and the City of New York in claims of defamation and prima facie tort. After the Supreme Court denied a motion for summary judgment, Brian appealed and the Second Department held that his clients statements were protected by a Qualified Privilege, and the defamation claims were dismissed.

***Ward v. Cross Sound Ferry*, United States Court of Appeals, Second Circuit, 2001**

Title 46 [U.S.C.App.](#) § 183b(a) permits a sea carrier to contractually limit the time period in which a suit for injuries may be filed by passengers, provided that time period is at least one year. The only restriction to enforcement of such limitations is that the carrier "reasonably communicate" the existence and importance of the limitation to the passenger. The Second Circuit had not considered this issue prior to this matter.

Community

- President, Head of the Bay Club, Huntington, New York, 2015-16



Presentations

- Presenter, Summations in Labor Law Construction Litigation, New York State Bar Association, 2016
- Presenter, Deposition Skills and Practice, New York State Bar Association 2016
- Presenter, Law School for the Claims Professional: When to Settle and When to Go to Trial, New York State Bar Association, 2017
- Presenter, Premises Liability: What You Need to Know in New York, New York State Bar Association, 2015
- Presenter, Handling the Police Liability Claim, National Business Institute, 2013
- Presenter, Premises Liability, New York State Bar Association, 1996

Publications

- Author, "Court of Appeals Decisions Clarify Primary Assumption of Risk Defense in Tort Actions," The Defendant, Defense Association of New York, Summer 2013
- Author, "Court of Appeals Decisions Clarify Assumption of Risk Defense in Tort Actions," New York Law Journal, May 10, 2013
- Author, "Recent Developments in the Assumption of Risk Defense," Torts Insurance & Compensation Law Journal, 2011
- Author, "Court of Appeals Rejects Estoppel Claim against Municipality," The Suffolk Lawyer, November 2009
- Author, "Appellate Rulings on Collateral Source Reduction of Jury Verdicts," Torts Insurance & Compensation Law Journal, Summer 2008