



## Lerner, Matthew S.

**Position:** Partner

**Co-Chair:** Appellate Advocacy

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### Location

Albany, New York

## Practice Areas

- [Appellate Advocacy](#)
- [Construction Law](#)
- [General Litigation](#)
- [Insurance Solutions](#)
- [Product Liability, Fire and Life Sciences](#)

## Admissions

New York



## Biography

Matt's many professional achievements highlight his career. Continuous peer recognition is testament to his dedicated efforts to stay at the forefront of the practice of law. Matt is widely recognized for his vast appellate experience. He acted as appellate coordinating counsel for one of New York's largest dental malpractice actions.

Matt has argued groundbreaking cases concerning New York's Scaffold Law, insurance coverage, premises liability, and products liability. He has successfully argued appeals at New York's highest court, all four Appellate Division departments, and the U.S. Circuit Court of Appeals for the Second Circuit. Matt has also authored numerous amicus curiae briefs, including briefs for a national non-profit organization that represents American and international product manufacturers. Matt has also defended clients at the trial level in catastrophic personal-injury matters, product-liability lawsuits, and other tort-related lawsuits.

Upon graduating law school, Matt served as a confidential clerk for the New York Court of Appeals. His experience in the unique procedural requirements of the state's highest court enhances the vast experience of the firm's Appellate Advocacy Practice Group.

In 2008, the New York State Bar Association presented Matt with its Sheldon Hurwitz Young Lawyer Award in recognition of outstanding contribution to the practice of law in the field of insurance.

## Education

- State University of New York at Buffalo, School of Law, J.D., *cum laude*, 1999 (publications editor of the *Buffalo Law Review*)
- State University of New York at Buffalo, B.A., *cum laude*, 1995

## Honors

- Upstate New York Super Lawyers, 2023-2025
- Martindale-Hubbell Peer Review Rating: AV Preeminent
- Sheldon Hurwitz Young Lawyer of the Year, New York Bar Association, 2008
- Law Dragon Rising Star – 2006



## Professional Leadership

- New York State Bar Association Current Member
  - Committee on Civil Practice Law and Rules

## Representative Matters

***Matter of Small Smiles Litig.*, 125 AD3d 1395 [4th Dept 2015]** – This matter concerned one of the largest dental malpractice actions in New York. The circumstances of the appeal were unique, addressing an unfounded claim of juror interference. The Appellate Division agreed with Matt that the trial judge abused her discretion in granting the plaintiff’s motion for a new trial, setting aside a no-cause verdict after a four-week trial. Matt and co-defendants’ counsel showed that the trial judge conducted an insufficient investigation into one juror’s claim that an individual was stalking the jury. The Appellate Division also agreed that the trial judge abused her discretion by prohibiting trial counsel from contacting any jurors about the one juror’s claim until after the judge granted the plaintiff’s motion to set aside the verdict.

***Rodrigues v N & S Building Contractors, Inc.*, 5 NY3d 427 [2005]** – In *Rodrigues*, Matt wrote a successful application to the New York Court of Appeals for leave to appeal. Through his in-depth research, Matt uncovered that the Appellate Division had erroneously relied on a case where the contract’s language was distinguishable from the contract at issue on appeal. On appeal to the Court of Appeals, the Court agreed with Matt’s argument that the indemnification clause in the construction agreement applied to the worksite at issue, even though the language did not state the specific worksite location. The Court’s decision is an important case in the development of Court of Appeals jurisprudence on Workers’ Compensation Law § 11 and indemnification claims against employers in New York for injuries to their employees.

***Arch Specialty Ins. Co. v Kam Cheung Constr., Inc.*, 104 AD3d 599 [1st Dept 2013]** – In this insurance coverage matter, Matt successfully argued that the policyholder made a material misrepresentation on its application and, had the insurer known the true facts, it would have refused to make such contract.

***Chapman v Town of Copake*, 67 AD3d 1174 [3d Dept 2009]** – In this case, the Appellate Division reversed the trial court’s ruling against Matt’s clients. He successfully argued that the homeowner’s exception to Labor Law § 240 (1) – New York’s Scaffold Law – applied in this lawsuit, resulting in the Appellate Division dismissing the plaintiff’s complaint as against his clients.



***Foxworth v Jenkins*, 60 AD3d 1306 [4th Dept 2009]** – The Appellate Division agreed with Matt, in this case, to vacate a default judgment and order awarding damages against his client. The matter concerned a motor-vehicle accident in which his client was the owner of one of the vehicles in the motor-vehicle accident. The driver of his motor vehicle could not be located for approximately one year from the time Matt’s client learned of the default judgment, thereby causing an unfair application of Section 388 (1) of the Vehicle and Traffic Law to his client.

***Salisbury v Christian*, 68 AD3d 1664 [4th Dept 2009]** – In this matter, the Appellate Division agreed with Matt that the trial court erred in granting the plaintiffs’ motion for a directed verdict on causation of a motor-vehicle accident. His client’s liability was vicarious. The court also agreed with Matt’s argument that there were credibility issues regarding the plaintiff’s claim on how the accident happened. Accordingly, the Appellate Division concluded that a directed verdict was not warranted and ordered, among other things, a new trial on causation and damages with respect to one of the plaintiffs.

***People v Vandover*, 20 NY3d 235 [2012]** – In *Vandover*, the Court of Appeals requested that Matt brief and argue the defendant’s position as amicus curiae. The case concerned a novel issue on probable cause within the context of suspicion of driving while under the influence. The Court agreed with Matt on the issue of reviewability of the Appellate Term finding, which affirmed the Justice Court’s dismissal of the charges asserted against the defendant.

## Community

- Tri-Village Little Leagues – Treasurer and Board Member
- Terramere Homeowners Association – Vice President

## Presentations

- Lecturer, “New York Foreclosure Law,” New York State Judicial Institute, January 2022
- Lecturer, “Bad Faith in New York,” NYSBA 2010 Law School for Insurance Professionals – More than the Basics, October 2010
- Lecturer, “The Advantages of Technology in Modern Litigation,” The Defense Research Institute, 2008
- Lecturer, “Legal Blogging: Prepare to Practice in the Blogosphere,” The Defense Research Institute, 2008



- Lecturer, “Using the World Wide Web to Investigate Your Case: Effective Pre-Trial Strategies and Techniques in New York,” Lorman Education Series, June 2007
- Lecturer, “Finding It Free and Fast on the Internet: Advanced Internet Strategies for the New York Legal Professional,” National Business Institute, 2007
- Lecturer, “Commercial Lines, Coverage for the Construction Defect Claim,” New York State Bar Association, 2006
- Lecturer, “Helping Your Trial Attorney Win: Essential Trial Preparation and Techniques for Paralegals in New York,” Lorman Education Series, 2006
- Lecturer, “Finding It Free and Fast on the Internet: Advanced Internet Strategies for the New York Legal Professional,” National Business Institute, 2006
- Lecturer, “Weblogs and R.S.S.: What Are They and How to Use Them,” Erie County, Supreme Court Lunchtime Series, 2005
- Lecturer, “Late Notice and Untimely Disclaimer Update,” New York State Bar Association, 2005
- Lecturer, “Bad Faith,” New York State Bar Association, 2005

## Publications

- Author, “Preserving the Trial Record for Appellate Review,” [\*Preparing for and Trying the Civil Lawsuit, 2d Ed.\*](#), 2016 Rev., New York State Bar Association
- Co-Author, “[Fraudulent Misjoinder: Combating Artful Pleadings Designed to Destroy Diversity Jurisdiction](#),” *DRI For the Defense*, May 2015
- Co-Author, “[Not Business as Usual for NY Court of Appeals](#),” *Law360*, January 13, 2014
- Co-Author, “[Emerging Trends and Changing Perspectives on Construction Defect Claims](#),” *Mealey’s Construction Defects*, December 2013 (This article also appeared in *Mealey’s Construction Defects Insurance*, November 2013)
- Co-Author, “[Your State or Mine? Supreme Court to Rule on Choice-of-Law and Forum Selection Clauses in Construction Contracts](#),” *American Bar Association Fidelity & Surety Law Committee Newsletter*, Fall 2013
- Co-Author, “[Construction Defect Claims: An Update \(Part I\)](#),” *DRI’s The Critical Path* (Newsletter of the Construction Law Committee), September 2012



- Author, "[The Court Rules on State Secrets in General Dynamics](#)," For the Defense, May 26, 2011
- Co-Author, "Not So Simple: Manufacturer's Liability for an Altered Product," Personal Injury Quarterly, New York Law Journal, September 7, 2010
- Co-Author, "Accidents Happen – Even Under the State Labor Law," New York Law Journal, June, 22, 2010
- Contributor, "Construction Site Personal Injury Litigation, New York Labor Law," New York State Bar Association 2010 Supplement
- Co-Author, "The Defense Lawyers Guide to the Internet: How to Find Golden Nuggets," 2009
- Co-Author, "Trade Secret Privilege," DRI Young Lawyer Compendium, 2008
- Author, "Decisions Lend Definition; Refinement to Novel Statutory Issues," New York Law Journal's New York Court of Appeals: The Year in Review, September 2008
- Co-Author, "The Defense of SUM Claims and the Serious Injury Defense," Defendant, Winter 2007/2008
- Co-Author, "Reforms to Notice of Claim Will Affect Policyholders and Insurers Alike," Buffalo Law Journal, October 25, 2007
- Co-Author with Professor of Philosophy Dr. James Delaney, "Using Intuition in Persuasive Legal Reasoning," For the Defense, July 2007
- Author, "An Introduction to the New Publishing Revolution: Blawgs, Plawdcasts, & Real Simple Syndication," The National Paralegal Reporter, Vol. 31, No. 4, Feb./Mar, 2007
- Author and Presenter, New York Court of Appeals Review: Recent Trends in the Labor Law and Workers' Compensation Law, September 2006
- Author, "Alternative Resources on the World Wide Web," For The Defense, June 2006
- Author, "Style Points for Exemplary Briefs: A Former Court Attorney's View, Certworthy," Appellate Advocacy Newsletter of Defense Research Institute, Winter 2006
- Author, "You Don't Have to Be a Techno Geek to Join the Information Revolution: A Step-By-Step Primer on Using Weblogs, R.S.S., and Podcasts," Albany County Bar Association Newsletter: Technology Section, Two-Part Series, 2006#

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- Author, "New York Court of Appeals Update," In Touch, New York State Bar Association Young Lawyers' Electronic Monthly Newsletter, 2006
- Author, "Surprises in Labor Law and Workers' Compensation," New York Law Journal's New York Court of Appeals: The Year in Review, Sept. 12, 2005
- Author, "Weblogs: A Publishing Revolution Ripe for Lawyers," The Whisper, Issue 11, Nov. 4, 2004
- New York Civil Law (<http://nylaw.typepad.com/>)
- Featured in, The American Bar Association Journal and The New York Law Journal
- Author, "When Diversity Leads to Adversity: The Principals of Promoting Diversity in Education Institutions, Premonitions of Taxman v. Board of Education Settlement," 44 Buff. L. Rev. 105, Spring 1999



## Community

- Guest lecturer, Engineering and Law Program, Manhattan College, February 2017
- Judge, American Mock Trial Association, Yale University, December 2016
- Board of Directors, Greenwich Audubon, Greenwich, CT, 2015-2018
- President, Rocky Point Club, Old Greenwich, CT, 2015-2018
- Member, Board of Estimate & Taxation, Greenwich, CT, 2007-2011
- Member, Board of Education, Greenwich, CT, 1999-2007
- Democratic Candidate – U.S. House of Representatives, 1988

## Presentations

- Presenter, “Product Liability Law in the U.S.,” People’s Insurance Company of China, Shanghai, China, May 2013
- Presenter, “Product Liability Law in the U.S.,” Cunningham Lindsey Hong Kong (Taiwan Branch) and Cunningham Lindsey China Co., Ltd. (Shanghai), October 2012
- Presenter, “Dean’s Roundtable: Products Liability Trials,” Brooklyn Law School; April 2012 Presenter, “United States Product Liability in Court – A Workshop Obtained from Reality,” Zurich S.p.A., Milan, Italy, April 2005
- Panelist, “Masters of the Courtroom: A Display of Innovative and Proven Trial Techniques,” American Bar Association, TIPS Section, Phoenix, Arizona, March 2008
- Presenter, “Anatomy of a Jury Trial: Direct Examinations,” Boston University School of Law, February, 2009
- Moderator, New York State Bar Association “Practical Skills,” May 2008
- Presenter, “Can the Commercial General Liability Policy Survive?” New York State Bar Association, June 2008
- Judge, American Mock Trial Association, Yale University, December 2008 Faculty, Transitional Training, Criminal Term Judges, Judicial Institute, April 2004
- Faculty, Mock Settlement Conference, Principal Court Attorneys, Judicial Institute, January 2004 Faculty, New Judges’ Orientation Program, Judicial Institute, December 2003