



Nicholas M. Cardascia

Partner

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Nicholas M. Cardascia is a partner in the firm's General, Tort and Insurance Litigation department. Nicholas has over 30 years experience handling all phases of litigation from inception through post-trial appeals. Nicholas concentrates his practice on the defense of real estate developers and managers and construction companies against claims based on alleged violations of the New York Labor Law, premises liability, property damage, and products liability.

For the eight years prior to joining Cullen and Dykman, Nicholas was the Co-Chair of the Appellate Practice Group with a well-known New York defense firm where he drafted over 100 appellate briefs that were submitted to the various appellate divisions of the State of New York, the Court of Appeals of the State of New York, and the Second Circuit Court of Appeals. In addition, Nicholas provided counsel to the firm's trial lawyers by preparing motions in limine and memoranda of law to protect the record for possible post-trial appellate practice.

Areas of Concentration

- Transportation Liability
- Premises Liability
- Construction Litigation
- Day Care/Child Care Negligence
- Liquor Liability
- Legal Malpractice
- No Fault, PIP/SUM Claims & Loss Transfer

Practices

- General Liability, Tort and Insurance Defense

- Appellate Litigation
- Construction Litigation
- Personal Injury/ Negligence
- Labor Law
- Property Damage
- Professional Liability

Bar Admissions

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

Education

- J.D., St. John's University School of Law, 1988
- B.S., Cornell University, School of Industrial and Labor Relations, 1985

Representative Experience

- *Yankovitch v. Fessel*, 170 A.D.3d 784 (2d Dep't 2019) - After a liability trial on a pedestrian knock down accident, a jury found the plaintiff to be 60% at fault and the defendant 40% at fault. The trial court granted plaintiff's post-trial motion to set aside the verdict and granted the plaintiff judgment as a matter of law, which, in effect, found defendant to be 100% at fault for the happening of the accident. On appeal, the Appellate Division, Second Department reversed the trial court's order and reinstated the jury's verdict.
- *Sarris v. Fairway Group Plainview, LLC*, 169 A.D.3d 734 (2d Dep't 2019) Plaintiff moved for an order granting her spoliation sanctions against defendant for failing to preserve video footage from certain outdoor cameras maintained by defendant supermarket. On appeal, the Appellate Division, Second Department reversed the order that granted plaintiff sanctions and determined that no sanctions were warranted.
- *Portalatin v. Tully Const. Co.-E.E. Cruz Co.*, 155 A.D.3d 799 (2d Dep't 2017) - The Appellate Division, Second Department affirmed the order that granted defendant's motion to dismiss plaintiff's causes of action premises on violations of Labor Law §§ 200 and 240(1). As to Labor Law § 200, defendant showed that the accident arose out of the manner of plaintiff's employer's work and that defendant did not exercise any supervisory authority over that work. As to Labor Law § 240(1), the granite stone did not fall because of the absence or inadequacy of a safety device of the kind enumerated in the statute.
- *Robinson v. National Grid Energy Mgmt, LLC*, 150 A.D.3d 910 (2d Dep't 2017) - The Appellate Division, Second Department dismissed plaintiff's complaint premised on violations of Labor Law §§ 240(1) and 241(6). As to Labor Law § 240(1), the court found that the plaintiff was the sole proximate cause of his injuries. As to Labor Law § 200, the court found that the plaintiff was not a covered worker because he was not involved in construction, demolition, or excavation.
- *Johnson v. Follett Higher Educ. Group, Inc.*, 113 A.D.3d 819 (2d Dep't 2014) - On appeal, the Appellate Division, Second Department reversed the lower court's order and dismissed plaintiff's complaint for false arrest, malicious prosecution, and abuse of process based on the evidence and arguments submitted by the defense.
- *Marrero v. Crystal Nails*, 114 A.D.3d 101 (2d Dep't 2013) - The Appellate Division, Second Department affirmed the dismissal of the plaintiffs' complaint where the plaintiffs had commenced a prior action that was dismissed for failure to prosecute. The court agreed with the position of the defendants that the 2008 amendment to CPLR 205(a) was not to be applied retroactively, thus plaintiffs could not rely on the savings provision of 205(a).

- *Adley v. Kansas Fried Chicken, Inc.*, 106 A.D.3d 565 (1st Dep't 2013) - The Appellate Division, First Department reversed the lower court and dismissed plaintiff's complaint based on the defendants' argument that they owed no duty to the plaintiff as they were out-of-possession landlords who did not create the defect.
- *Adami v. Warwick Valley Cent. School Dist.*, 105 A.D.3d 982 (2d Dep't 2013) - The School District established its entitlement to judgment as a matter of law by showing that the plaintiff voluntarily assumed the risk of being hit with a discus by participating in the track and field event.
- *Gonsalves v. 35 W. 54 Realty Corp.*, 147 A.D.3d 815 (2d Dept 2017) - The two plaintiffs were injured while attempting to lower a power washer from a sidewalk bridge. They sued the building owner, who, in turn, sued their employer. At the close of the evidence of the apportionment trial between the building owner and employer, the employer moved for judgment as a matter of law pursuant to CPLR 4401. The trial court denied the motion. The jury returned a verdict finding that the employer was negligent and that their negligence was a proximate cause of the accident. On appeal, the Appellate Division, Second Department reversed the trial court's order and held that there was no rational basis by which the jury could have found that the employer was negligent.
- * Some of these matters were handled by Nicholas prior to joining Cullen and Dykman LLP
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Professional and Community Activities

- Member, New York State Bar Association
- Member, Defense Research Institute

Publications

- Defendant - The Journal of the Defense Association of New York, Inc., Vol. 14 No. 2, The Labor Law Issue - What Activity Constitutes An "Alteration" Under Labor Law § 240(1)? -Winter 2014