

NEW YORK CITY

ESTATE OF DECEDENT v. MEDICAL EQUIPMENT COMPANY NEW YORK STATE SUPREME COURT, SUFFOLK COUNTY



Tara Fappiano and Constantinos Tsanatelis obtained a decision in favor of HBG's client, a company that supplies oxygen concentrators. Plaintiff claims that the decedent was severely burned when an oxygen concentrator allegedly caught fire in decedent's home. A lawsuit was filed which included allegations of product liability, negligent failure to warn, and breach of express and implied warranties. After discovery was completed, plaintiff moved to amend the plaintiff's bill of particulars to change the date of the alleged accident. HBG opposed the motion arguing that there was no evidence adduced during discovery to support the plaintiff's petition to amend the accident date. Furthermore, HBG argued that

such an amendment would cause unfair prejudice to the defendants as discovery was already completed. The court denied the motion and held that the amendment could not be permitted pursuant to CPLR 2001, which allows for the correction of a mistake, omission, defect, or irregularity in a pleading, if the substantial right of a party is not prejudiced. The court agreed with HBG's argument that permitting the amendment would require reopening discovery to the extent of re-deposing all witnesses and would unfairly prejudice HBG's client. Thereafter, HBG successfully leveraged the court's ruling into a beneficial settlement on behalf of its client.



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