

CASE STUDY



## Brief Appealing Judge's Decision Saves Workers' Compensation Defense

BY ROBERT L. KAISER | 2019

**A**s Goldberg Segalla associate attorney [Thais E. Rodriguez](#) sat down to write a brief one day last winter, she felt the stress that comes with a crucial task. She had to persuade the state Workers' Compensation board to rescind a judge's decision that effectively established a \$5 million claim against her client by not allowing her to call witnesses or present evidence in that client's defense.

The workers' compensation claim in question had been filed by a masonry worker in March 2017, almost seven months after he injured his right foot by catching it in a scaffold cross-brace. The claim was denied because the worker was a non-leased employee—someone the masonry company had brought on board without going through the professional-employer organization that, by contract, was supposed to do its hiring. Now, the worker was challenging the denial of his claim, and Goldberg Segalla attorneys were preparing to defend the professional-employer organization's insurance carrier, whose policy covered workers' compensation claims for leased employees of the masonry company. But a judge had denied their request to develop the record, a decision that effectively short-circuited their defense of the insurance carrier and, from their standpoint, rendered the case all but lost.

## Brief Saves Workers' Comp Defense

And so, on January 18, 2018, after a day spent researching case law, Thais crafted a three-page, roughly 1,000-word appeal calling the judge's decision "arbitrary and capricious" and asking the New York State Worker's Compensation Board to overturn it. The board did. Its decision thrilled her client, whose claims manager sent a copy to the owner of the insurance company. It also spoke to Thais's strengths as a litigator and the resourcefulness of Goldberg Segalla's [Workers' Compensation](#) practice. ■

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