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## C A S E A L E R T

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### **KATZMAN OPINION ON MALINGERING SOLICITED, RELIED UPON BY NATIONAL MEDICAL JOURNAL**

In April the Appellate Division issued an important decision in [Rodriguez v. Wal-Mart Stores, Inc.](#), overturning a jury verdict for the defense in a bodily injury case because the trial court improperly permitted a defense neurologist to testify that the plaintiff was magnifying her symptoms. The decision suggests that only a qualified mental health expert may opine as to malingering. However, the decision does not preclude a qualified medical expert from testifying that the plaintiff's subjective complaints were inconsistent with objective tests, the chronological history of the patient, the expectation of improvement, the expert's own experience and the medical literature. The defense doctor may discuss his own clinical evaluation and testing and explain that they are inconsistent with the subjective complaints of the plaintiff and the findings of the plaintiff's experts. There

is nothing wrong with a defense doctor testifying that the plaintiff's subjective complaints are unsupported by objective findings.

On the heels of this decision and its focus on the all-too-familiar phenomenon of malingering in litigation, in a very unusual but extremely flattering move, a prominent medical journal has sought assistance and relied upon the opinion of M&W partner [Stephen Katzman](#). E-Plasty Medical Journal has published an insightful article with commentary by Stephen in which he shares his perspective as a seasoned defense litigator about the effects of malingering on the legal and managed risk industries. Click [here](#) to review the article and commentary from Stephen, and feel free to contact us to discuss this issue in the context of any case or claim you may be handling.

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