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FLYNN|WIRKUS|YOUNG

Indemnity / Third Party Recovery

At Flynn|Wirkus|Young our attorneys apply to our indemnity practice the dedication, passion, and “out of the box thinking” that sets us apart from our competitors. We help our clients identify and pursue indemnity obligations and contribution opportunities and realize other third-party recoveries.

We have extensive experience litigating and negotiating indemnity issues in a results-oriented and cost-effective manner. This includes analyzing contractual provisions at case inception, preparing tenders to putative indemnitees, and pursuing indemnity, contribution, and other third-party litigation through trial and beyond if necessary.

Selected examples of our indemnification results:

- ***FWY Attorneys Secure \$5.35 Million Settlement of Freight Railroad’s Indemnity Claims. U.S.D.C., E. D. of AR, Little Rock.*** This indemnity case stemmed from an injury claim settled several years earlier, involving a traumatic amputation that occurred during an intraplant switching operation at a poultry-processing facility. The poultry processor refused to contribute to the underlying settlement. FWY attorneys handled the mediation of the underlying claim, and also represented the freight railroad and its insurer in the subsequent indemnity action. After several years of litigation, including two interlocutory appeals to the Eighth Circuit, the indemnity case was settled on the eve of trial – the processor reimbursed FWY’s clients for the full amount paid in the underlying action, plus \$350,000.00 for attorneys’ fees and costs.
- ***Class I Freight Railroad Obtains Combined \$2 Million Settlement of Three Indemnity Claims. Suffolk Sup. Ct., Boston, MA.*** FWY’s client was forced to defend three lawsuits, all arising from different incidents, due to the refusal of a transit authority to honor its contractual indemnity obligations. After defending the lawsuits, two of which were settled (summary judgment was entered in the third), FWY sought through separate actions the enforcement of its client’s indemnity rights. After obtaining declaratory judgment that the authority was indeed obligated to indemnify their client, FWY’s attorneys then procured a \$2 million settlement, which represented reimbursement of the settlement of the underlying lawsuits and the costs (including attorneys’ fees) of defending those suits.

“FWY are experts at enforcing indemnity contracts. In a recent case, they pursued enforcement of indemnity on our behalf against an industry - although they fought us, ultimately we recovered the whole settlement amount plus legal fees. This result speaks volumes to the diligence, soundness of their work product, and advice to me on the issue.”

- Senior Excess Claims Examiner,
Global Insurance Company

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400 Crown Colony Drive
Suite 601
Quincy, MA 02169
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FLYNN|WIRKUS|YOUNG, P.C.
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Franklin, MA 02038
(617) 773-5500

FLYNN|WIRKUS|YOUNG, P.C.
48 North Water Street
New Bedford, MA 02740
(617) 773-5500

FLYNN|WIRKUS|YOUNG, P.C.
80 Huron Street
Buffalo, NY 14202
(716) 858-3112

FLYNN|WIRKUS|YOUNG, P.C.
2424 East York Street
Suite 316
Philadelphia, PA 19125
(215) 568-1440



- **Regional Freight Railroad Recovers Nearly \$1 Million for Derailment Damages in Contractual Indemnity Case. U.S.D.C., Dist. of MA, Springfield.** A regional freight railroad was operating a train over the tracks of FWY's client (another regional railroad which was owned by a global holding company) pursuant to a Trackage Rights Agreement which emanated from an old ICC order. The train derailed and caused nearly \$1 million in damages. The operating railroad refused to reimburse FWY's client, so FWY filed a complaint in federal court. The operating railroad tried to invoke the STB's jurisdiction, but it abstained. After FWY defeated the defendant's preemption motion in the federal court action, they brokered a settlement of the full amount of the derailment costs.
- **FWY Settles FELA Wrongful Death Actions, Then Collects \$600,000.00 for Passenger Railroad in Subsequent Indemnity Case. U.S.D.C, Dist. of RI, Providence.** This settlement, for a railroad passenger carrier and its insurer, represented the reimbursement of costs and fees in an indemnity action, which arose from a fatal on-track incident that also resulted in two other serious injury claims. FWY defended all of the underlying FELA claims - which were settled - then prosecuted the contractual indemnity action against the putative indemnitee, a national railroad construction company.
- **Regional Freight Railroad Pays Nothing on Plaintiff's FELA Claim, After Negotiating Mediated Agreement Which Required Co-Defendant Manufacturer to Pay Full \$200,000.00 Settlement to Plaintiff. U.S.D.C., Dist. of CT, Hartford.** The plaintiff railroad employee was injured while dropping cars at a manufacturing plant, when he rode a car into a bollard and was knocked to the ground. He sued the manufacturer in negligence and his employer – FWY's client – under the FELA. FWY cross-claimed for indemnity against the manufacturer, invoking provisions of a sidetrack agreement. Just before trial, with FWY's summary judgment motion still pending, the case settled after a mediation with the federal judge who was handling the case.
- **Court Orders Commuter Rail Operator to Indemnify and Defend FWY's Client – a Freight Railroad – in Grade Crossing Case. Norfolk Sup. Ct., Dedham, MA.** Passengers in a commuter rail train were allegedly injured in a grade crossing collision in suburban Boston. They sued the commuter rail operator and FWY's client, a class I freight railroad. FWY's client prevailed on a summary judgment motion on its indemnity cross-claim against the commuter rail operator, based on the interpretation of certain provisions of an operating agreement. As a result, the court ordered the operator to defend and indemnify FWY's client, who ultimately received more than \$100,000 in attorneys' fees and defense costs.
- **Regional Railroad Receives Reimbursement of \$50,000.00 in Attorney's Fees After FWY Obtains Summary Judgment Against Transloading Facility Operator. U.S.D.C., Dist. Of MA, Boston.** A conductor was injured while riding a shove in a transloading yard, when he ran into a mobile tool cart that was left too close to the tracks by the facility operator. He sued FWY's client (a class I railroad) under the FELA, and the facility operator. FWY brought a cross-claim against the operator for contractual indemnity based on a provision of the facility lease. FWY's attorneys obtained summary judgment on both the defense of the FELA claim as well as the indemnity cross-claim, then brokered a mediated settlement in which its client paid nothing to the injured worker, and recovered the full amount of the attorney's fees and costs it had incurred in defending his FELA case.



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"FWY brings all of the experience, knowledge, and sophistication you'd expect in a top-notch law firm along with unrivaled drive and fresh perspective. I have worked with many law firms of all sizes and FWY is at the top of the list."

- Claims Investigator,
Class I Railroad

"I have worked with 100s of law firms of all sizes throughout the country. FWY is at the top of the list, which is why I send them around the country - they know their business, do great work, are not afraid to go to trial, come across great in front a jury, and are nice people who are fun to be with."

- Senior Claims Examiner,
Insurance Company



Meet Our Partners

Michael B. Flynn

President and Senior Trial Attorney



Michael Flynn, AV® Preeminent™ 5.0 out of 5 peer rated in Martindale-Hubbell, is a seasoned trial

lawyer with over 25 years of experience who concentrates his practice in the areas of complex civil and commercial litigation. He serves as lead counsel for insurers and companies in highly regulated industries—such as railroads, shippers and motor carriers—in state and federal courts throughout the U.S. Michael has gained national acclaim for his success in numerous high-profile cases for his clients. His work has been featured in publications such as the MBA Journal and the Massachusetts Lawyers' Weekly—where a case he litigated was reported in 2004 as one of the “biggest” defense wins of the Year — and in the Massachusetts Lawyers' Weekly Annual Report of the largest defense verdicts in 1995 and 1996. Michael frequently speaks on various litigation-related topics—such as trial skills and strategies, persuading juries, evidentiary matters and developments in the law— to legal, claims and trade organizations, including the NARTC, the ASLRRRA and the Southeastern Claims Conference. On the cutting-edge of industry trends and technology, Michael also addresses timely issues such as FRSA/OSHA whistleblower law and how to leverage the latest technological innovations in a legal environment. Before founding the firm in 1998, Michael was an associate attorney at the Boston law firms of Latti Associates; Parker, Coulter, Daley & White; and Brister & Zandrow. He was also a special assistant district attorney with the Middlesex County District Attorney's Office in Cambridge, Massachusetts. He currently resides in Braintree, MA, with his wife and their four children, one of whom is an undergraduate at the University of Massachusetts, Amherst, MA.

Practice Areas

- Civil and commercial litigation
- FELA defense
- Insurance defense
- Products liability

- Railroad claims and litigation
- Toxic tort defense
- Transportation law
- Trucking litigation
- Whistleblower (FRSA, OSHA)

Notable Cases

Lead trial Counsel, with Matthew Cianflone and Lori Wirkus in *Ziniti v. NECR, Inc., 2019 VT 9*, a traumatic brain injury case which resulted in a defense verdict. The verdict was upheld on appeal.

Lead Trial Counsel, along with Scott Orndoff, in *Oldread v. CarvedRock LLC, et al*, which resulted in a \$5.3 million settlement for the firm's client, confirmed to be the largest settlement ever reached in Judge Tracey Bannister's session.

Lead trial counsel for CSX Transportation, Inc. in the case of *Wright v. CSX Transp., Inc.*, which Massachusetts Lawyers Weekly reported as “one of the biggest defense wins of the year” for 2004.

Trial counsel in the case of *Santos v. Consolidated R. Corp.*, which was tried to a defense verdict in May 2000 after the plaintiff demanded more than \$5 million.

Trial counsel, along with Lori Wirkus, in *Gillespie v. Emerson*, which resulted in a \$1 million verdict for the firm's client.

Defense trial counsel in the following cases of *Nicholopolous v. Consolidated R. Corp. and Whitehouse v. Consolidated R. Corp.*, which were recognized by Massachusetts Lawyers Weekly as being among the largest defense verdicts in 1995 and 1996, respectively.

Speeches and Publications

"Diffuse Tensor Imaging and How to Address the Science at Trial", National Association of Railroad Trial Counsel (NARTC) Sponsored Webinar, May 15, 2018

"Cross-examination in the 21st Century: Have Juries Become Immune to Lying?", Presenter, NARTC 61st Annual Meeting, July 27, 2015, Farmington, PA.

Ammunition or Shackles: Managing Crisis Response to Maximize Your Legal Position", Co-presenter with Lori A. Wirkus, New England Railroad Club Annual Rail Forum & Expo, March 19, 2015, Worcester, MA.



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"Mike's preparation for depositions and trials always amazes me. Through his thorough research of the parties and the issues, he is able to ferret out information that wasn't initially apparent – issues that most often led to a resolution favorable to the railroad. I think of Mike as a “dog with a bone”; he digs into things until he knows all there is to know about them."

- Claims Manager,
Class I Railroad

"I began working with Mike Flynn in 1992, and to this day, he amazes me. He loves the railroad and does everything possible to defend us. No one comes close to the way he and his firm prep for depositions and trials – if there is anything to find, they find it. There are not enough adjectives to describe FWY – they are on top of everything, exceptionally smart and just phenomenal."

- Claims Agent,
Class I Railroad



"When Does the Work Come Without the Comp?: How Railroad Workers' Injuries are Handled Under the FELA", Work Related Injuries Conference, Waltham, MA, March 25, 2014.

"Stupid is as Stupid Does: Getting to the Bottom of Neuropsych Testing in TBI Cases." AAR General Claims Conference, Palm Beach, FL, October 2, 2013 and NARTC 59th Annual Meeting, Boston, MA September 10, 2013.

"The Production of a Trial: Keeping Their Hands Out of Your Pockets by Keeping Them on the Edge of Their Seats." NARTC 58th Annual Meeting, Santa Barbara, CA, July 31, 2012.

"Persuading by Entertaining: Leveraging Technology to Deliver Winning Results." Co-presenter with Lori A. Wirkus, SECC, Charlotte, NC, June 27, 2012.

"Technology in the Courtroom: The iPad is Ready for Primetime, Are You?" NARTC Trial College, Dallas, TX, June 8, 2012.

"Anatomy of a FELA Claim: Nailing Down the Facts You Need to Nail Down a Claim." Panelist, ASLRRRA 99th Annual Convention, Indianapolis, IN, April 23, 2012.

"Creative Thinking for Lawyers: Challenging Conventional Wisdom, Developing Hooks and Persuading by Entertaining." NARTC Winter Meeting, Phoenix, AZ, March 6, 2012.

"Dealing With Trespassers - Keeping Them Off Your Tracks and Out of Your Pockets." ASLRRRA 98th Annual Convention, San Antonio, TX, May 2, 2011.

"Be Careful What You Ask For: How Plaintiff's Counsel Can Profit from the Defense Medicare Set Aside." NARTC Winter Meeting, Orlando, FL, February 25, 2010.

"Claims, Coverage and Cooperation: A Factual Guide to Representing Insured Carriers." Panelist, NARTC Winter Meeting, Phoenix, AZ, March 10, 2008.

"Kids, Cops and Cartoons: Defending 'Child Trespasser' Cases in Today's Environment." NARTC 52nd Annual Meeting, San Diego, CA, August 2, 2006.

"Dealing with So-Called 'Speaking Objections: How to Prevent Improper Coaching of Witnesses During Depositions.'" NARTC Winter Meeting, Lake Buena Vista, FL, February 22, 2005.

"Dealing with So-Called 'Speaking Objections: How to Prevent Improper Coaching of Witnesses During Depositions.'" NARTC Winter Meeting, Lake Buena Vista, FL, February 22, 2005.

"The Admissibility of OSHA Regulations in a FELA Case: Is This Town Big Enough for Both of Us?" NARTC Winter Meeting, St. Petersburg, FL, February 24, 2004.

Activities and Honors

AV® Preeminent™ 5.0 out of 5 peer rated in Martindale-Hubbell.

National Association of Railroad Trial Counsel (NARTC), Executive Committee Member, Chairman of Program Committee, and former Eastern Region Vice President.

American Short Line and Regional Railroad Association (ASLRRRA), Member and former General Counsel Committee member.

American Journal of Law & Medicine, former member, Boston University School of Law, 1991.

Received Boston University's American Jurisprudence Book Award for achieving the school's highest grade in Trial Advocacy in 1990-1991.

Admissions

Massachusetts, 1991
New York, 2002
Pennsylvania, 2007

U.S. District Courts for:
Massachusetts, 1992
Connecticut, 2000
Vermont, 2003
Illinois (Middle District)
New York (Northern District), 2005
New York (Western District), 2013
Pennsylvania (Eastern District), 2006
First and Eighth
Circuit Courts of Appeal

Pro hac vice: Arkansas, Iowa, Illinois, New Hampshire, New Jersey, Rhode Island

Education

J.D., Boston University School of Law, Boston, MA, 1991
B.A., summa cum laude, University of Massachusetts, Amherst, MA, 1988
United States Military Academy, West Point, NY, 1983-1985



**Our Passion.
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"Mike Flynn is an incredibly respectable attorney who administers his law firm with the utmost integrity and skill. Whether dealing with a Federal Employers Labor Act matter, grade crossing incident, or simply providing general legal counsel, Mike has time and again demonstrated his ability to provide sound legal advice regarding complex matters with great tact and professionalism."

- General Counsel,
Regional Transportation
Company

"I say with the most sincere conviction that Mike Flynn is the best trial attorney I have ever seen, heard of, or been in the same courtroom with. Simply, there are few people in the country that have the same courtroom skills and presence that Mike Flynn possesses."

- Former Associate General
Counsel, Regional Carrier



Lori A. Wirkus
Managing Partner



Mrs. Wirkus is an experienced litigator with over 20 of years experience in insurance defense, railroad regulations, and transportation law. Prior to joining the firm in 2001, Lori was an

associate with the Law Offices of John R. Gulash & Eugene J. Riccio, a civil and criminal litigation firm in Bridgeport, Connecticut, where she was involved in personal injury litigation, wrongful imprisonment, municipal liability and criminal defense. While attending law school, Lori interned for the Honorable Michael Hartmere and clerked for Gulash, Fleischmann & Riccio, both located in Bridgeport, Connecticut.

Lori is also a certified mediator and provides mediation services for **Re:resolution Mediation Group, LLC**.

Lori resides with her husband and their two children in Norfolk, Massachusetts.

Practice Areas

- Civil litigation
- Employment Defense
- Mediation
- FELA defense
- Insurance defense
- Railroad claims and litigation
- Transportation
- Whistleblower (FRSA, OSHA)

Professional and Community Activities

- President, Massachusetts Chapter of the Claims and Litigation Management Alliance
- Board of Directors, Franklin Performing Arts Company, Member
- Franklin Performing Arts Co., Resource Development Team Chair
- Member, Boston Chinatown Neighborhood Center (BCNC), Quincy Leadership Council
- American Association of Short Line and Regional Railroads, Member
- National Association of Railroad Trial Counsel, Member
- Connecticut Defense Lawyer's Association
- Quinnipiac Law Alumni Association
- Catechist, St. Jude's Church, June 2011 - present

Speeches and Publications

"It's a New Era: What You Need to Know About Sexual Harassment in the Workplace" , XS Brokers, Workplace Education Presentation, Quincy, MA, November 7, 2017

"Is There Really a Monster In the Closet? Shining Light on Current MSP Developments", Co-Presenter with Michael B. Flynn, to Global Indemnity Group, Scottsdale, AZ, May 24, 2016; CVS, Cumberland, RI, October 8, 2015; Global Indemnity Group, Bala Cynwyd, PA, June 3, 2015.

"Ammunition or Shackles: Managing Crisis Response to Maximize Your Legal Position", Co-presenter with Michael B. Flynn, New England Railroad Club Annual Rail Forum & Expo, March 19, 2015, Worcester, MA.

FRSA/OSHA Whistleblower Law: Everything You Wanted to Know But Were Afraid to Ask." ASLRRRA General Counsel Symposium and Finance and Administration Seminar, Kansas City, MO, November 29, 2012.

"Employee Injury with Rules Violation: How to Maintain Proper Rules and Discipline without Fear of OSHA Retaliation Claims," 19th Annual Liability Conference, ASLRRRA, Las Vegas, NV, July 13, 2012.

"Persuading by Entertaining: Leveraging Technology to Deliver Winning Results." Co-presenter with Michael B. Flynn, Southeastern Claims Conference, Charlotte, NC, June 27, 2012.

"Confronting Cutting Edge FELA Plaintiff Lawyer Tactics: The Impact of Plaintiff's Voluntarily Dismissing Garden Variety Negligence Theories in Order to Proceed on Strict Liability in LIA or SAA claims." NARTC Winter Meeting, Miami, FL, March 7, 2011.

"Dissecting a Legal Claim," co-presenter, ASLRRRA, 18th Annual Railroad Liability Conference, Milwaukee, WI, June 9, 2011.

Assistant editor, *Journal of Business and Economic Studies*, Fairfield University, 1994.

Admissions

- Massachusetts, 1997
- Connecticut, 1999
- Pennsylvania, 2006
- Ohio, 2014

U.S. District Courts for:

- Connecticut, 1998
- Massachusetts, 2001
- Vermont, 2003
- New York, 2006
- Pennsylvania, 2006
- Pro hac vice: Iowa, Rhode Island, New York

Education

- J.D., Quinnipiac University School of Law, Hamden, CT, 1996
- B.S., Business, Fairfield University, Fairfield, CT, 1994



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"In addition to bringing decades of experience and legal skills to the table, FWY takes the time to learn your business and apply that knowledge in a way that allows them to become true partners. Their tenacity, zeal, and attention to detail set them apart from other counsel and provides the framework to allow their clients to effectively mitigate their risks."

- Director of Risk Management, Class I Railroad

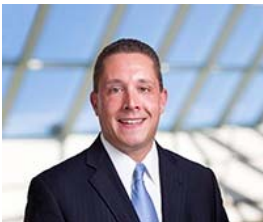
"FWY's entire legal team is easy to work with, extremely knowledgeable, and unequivocally client-focused."

- General Counsel, Regional Railroad



John E. Young, IV

Partner



Mr. Young joined the firm in September 2002, and became a partner in January 2012. He and Mr. Flynn recently tried two railroad related

Cases,, one in New York and one in Massachusetts. They received defense verdicts in both cases, each involving multi-million dollar demands. He frequently practices in courts around the country, gaining national experience for the firm. John was previously an associate with the Boston law firm of Murphy & Riley, P.C., where his practice focused on the defense of liability claims including professional malpractice, premises liability, automobile and land transport, and employment litigation. He has worked with a wide variety of professionals, municipalities, property owners, insurers, self-insureds, non-profit organizations, and corporations. While in law school, John served as a law clerk for the Honorable Michael Higgins of the Rhode Island District Court. He also worked for the National Association of Security Dealers in Boston during law school, investigating alleged violations of federal and state securities laws.

A native of Massachusetts, John was born in Hyannis and raised on Cape Cod. He resides in Norwell with wife, Dawn Ethier Young, a family law attorney with the Boston firm of Atwood & Cherny, PC, and their two daughters.

Practice Areas

- Personal Injury Defense
- FELA defense
- Grade crossing litigation
- Insurance defense
- Railroad claims and litigation
- Toxic tort defense
- Trespasser accidents
- Trucking and transportation
- Real Estate
- Copyright Infringement

Professional and Community Activities

- Massachusetts Bar Association
- Defense Research Institute
- Massachusetts Defense Lawyers Association
- Federal Bar Association
- National Association of Railroad Trial Counsel
- Quincy Chamber of Commerce
- South Shore Chamber of Commerce
- ProVisors – Executive Committee
- University of Rhode Island Alumni Association

Admissions

Massachusetts
Connecticut
Pennsylvania
New York
U.S. Court of Appeals, First and Eighth Circuits

U.S District Courts for:
Massachusetts
Connecticut
Vermont
New York (All Districts)

Pro hac vice: Arkansas, Connecticut, Illinois, Iowa, Maine, New York, Rhode Island

Education

J.D., Suffolk University Law School,
Boston, MA, 2002
B.A., cum laude, University of Rhode Island,
Kingston, RI, 1999



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“What makes FWY unique is that our practice has been built on achieving consistently excellent results in a wide-variety of difficult contexts and jurisdictions. Partnering with our clients to earn their confidence and build strong, trusting relationships is one of the fundamental principles upon which our firm was founded in 1998, and the idea which sets the table for our core values today. In fact, ‘Our Passion. Your Excellence’ is our firm motto - it is the bedrock of everything we do. We have built our practice by learning our clients’ businesses, from the inside out, in order to fully understand their needs and determine the best practices necessary to provide services particularly tailored to meet these needs. FWY is a full service civil litigation firm. FWY's attorneys are admitted in many jurisdictions including MA, NY, NJ, OH, CT, PA, NC and SC with offices in Quincy, MA, Philadelphia, PA and Buffalo, NY.”

- John E. Young

