

# **EXHIBIT 13**

JVR No. 191724, 1996 WL 778203 (N.Y.Sup.) (Verdict and Settlement Summary)

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Supreme Court, Rensselaer County, New York.

GERBER, PRO AMI v. HOWARD D / B / A WOODSTOCK  
MANOR HOME FOR SENIOR CITIZEN; CHARNOW ASSOCIATES

107888 / 94

DATE OF INCIDENT: August, 1992

DATE OF FILING: January, 1994

DATE OF TRIAL: December, 1996

TOPIC:

LIABILITY:

General: NURSING HOME NEGLIGENCE

Specific: Negligent supervision

**SUMMARY**

**Outcome:** Plaintiff Verdict

**Non Verdict Award:** \$1,766,142

**Total Verdict:** \$1,766,142

**Final Demand:** \$75,000

**Final Offer:** \$55,000

**EXPERT-WITNESSES:**

**ATTORNEY:**

**JUDGE:** Not Available

**RANGE AMOUNT:** \$1,000,000-1,999,999

**STATE:** New York

**COUNTY:** Not Applicable

**PRIMARY INJURY:** Hip Fracture

**INTERNAL FIXATION:** Yes

**SUMMARY**

**PLAINTIFF:**

Sex: Male

Age: 63

**DECEDENT:**

**DEFENDANT:**

Type: Individual / Organization

Sex: Male

Occupational Field: Services-Health

Insurance: Continental

**DAMAGES:**

Past Medical: \$16,142

Pain and Suffering: \$1,750,000

Total: \$1,766,142

**COMPARATIVE NEGLIGENCE PERCENTAGE: 5%**

**FACTS:**

A 63-year-old male suffered a minimally displaced **hip fracture**, requiring open reduction and internal fixation, when he slip and fell on urine at the defendant nursing home while he attempted to go to the bathroom. The plaintiff contended that the plaintiff had a long history of incontinence and that the defendant failed to supervise the plaintiff. The defendant denied negligence. The plaintiff was found five percent negligent and the award was reduced to \$1,677,835. The award was against the defendant only; the co-defendant received a defense verdict.

Jury Verdict Research

COURT: Supreme

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## WestlawNext

**BONCHICH v. KURIS; RALO; OXFORD RESOURCES CORP.**

Supreme Court, Thirteenth Judicial District, Richmond County, New York January 7, 1993 (Approx. 2 pages)

JVR No. 343148, 1994 WL 766150 (N.Y.Sup.) (Verdict and Settlement Summary)

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Supreme Court, Thirteenth Judicial District, Richmond County, New York

**BONCHICH v. KURIS; RALO; OXFORD RESOURCES CORP.**

11994(1993)

DATE OF INCIDENT: April, 1990

DATE OF FILING: January, 1993

**TOPIC:****LIABILITY:**

General: PEDESTRIAN

Specific: Crossing Intersection

**SUMMARY**

Outcome: Settlement

Non Verdict Award: \$650,000

**EXPERT-WITNESSES:****ATTORNEY:**

JUDGE: Not Available

RANGE AMOUNT: \$500,000-999,999

STATE: New York

COUNTY: Richmond

PRIMARY INJURY: Hip Fracture

INTERNAL FIXATION: Yes

**SUMMARY****SETTLEMENT TIME:****PLAINTIFF:**

Sex: Male

**DECEDENT:****DEFENDANT:**

Type: Individual / Organization

Sex: Male

**DAMAGES:**

Other: \$650,000

Total: \$650,000

COMPARATIVE NEGLIGENCE PERCENTAGE: 27%

**FACTS:**

A male suffered a fractured hip, requiring open reduction and internal fixation, and facial fractures, requiring surgery, when he was struck by a vehicle operated by the male defendant and leased by the male co-defendant as he crossed at an intersection. The plaintiff is confined to a wheelchair in a nursing home. The defendant contended that the plaintiff ran out in front of the vehicle and was contributorily negligent.

Jury Verdict Research

COURT: Supreme

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**SELECTED TOPICS****Case Evaluator**

Generates a report that compares the outcomes of comparable cases

**Automobiles**Injuries from Operation, or Use of Highway  
Intersection of an Avenue and Street,  
Crosswalk**Secondary Sources**

Duty of pedestrian crossing street or highway as regards looking for automobiles

79 A.L.R. 1073 (Originally published in 1932)

...There is no imperative rule of law requiring a pedestrian under all circumstances to look for approaching automobiles before crossing a street or highway. In crossing a street or highway, a pedestrian .

Liability for collision of automobile with pedestrian at intersection as affected by reliance upon or disregard of stop-and-go signal

2 A.L.R. 3d 156 (Originally published in 1955)

...This annotation collects the cases directed to the question of the effect upon liability for a direct collision between an automobile and a pedestrian in or very near an intersection of public streets .

Duty and liability to person struck by automobile while crossing street at unusual place or diagonally

67 A.L.R. 313 (Originally published in 1935)

... (Supplementing annotation in 14 A.L.R. 1176) As to liability for injury to pedestrian struck by automobile while walking along street or highway, see the annotation following Keller v. Greenman, ante....

**See More Secondary Sources****Briefs****Reply Brief for Defendants-Appellants**

2007 WL 3125473

Rainer Joseph KIRCHGAESSNER, as Administrator of the goods, chattels and credits of Miriam Rachel Kirchgassner, Deceased and Rainer Joseph Kirchgassner, Individually, Plaintiffs-Respondents, v. Israel HERNANDEZ, Jr., Borax Paper Products, Inc., A.A. Truck Renting Corp. and Revlow Maintenance Corp., Defendants-Appellants. Supreme Court, Appellate Division, First Department, New York. March 08, 2007

...FN1: The silence in Plaintiff's brief concerning the Nesevich doctrine suggests the point is conceded. Plaintiff was required to but failed to show both defendant's negligence and decedent's lack of ...

**Brief for Defendant-Respondent**

2010 WL 9889440

Yimin FENG aka/ya Yimin Feng, Plaintiff-Appellant, v. Jin Wen OH, Defendant-Respondent. Supreme Court, Appellate Division, Second Department, New York. January 13, 2010

... By Order, dated June 16, 2009 (R 3), the Supreme Court, Kings County (Manh. J.) held: FN1. Numbers in parenthesis preceded by the letter "R" refer to the pages from the Record on Appeal. Motion by plaintiff.

**Brief for Defendant-Respondent**

WestlawNext

Eugene Tannen, as Guardian of the Incapacitated Plaintiff, Edith Tannen, and Eugene Tannen, Individually v. The...  
Supreme Court, Twelfth Judicial District, Bronx County, New York June 11, 2010 (Approx. 3 pages)

2010 WL 3297162 (N.Y.Sup.) (Verdict and Settlement Summary)

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Supreme Court, Twelfth Judicial District, Bronx County, New York.

Eugene Tannen, as Guardian of the Incapacitated Plaintiff, Edith Tannen,  
and Eugene Tannen, Individually v. The Hebrew Home for the Aged at  
Riverdale

No. 24105/03

DATE OF VERDICT/SETTLEMENT: June 11, 2010

TOPIC: NURSING HOMES - NEGLIGENT SUPERVISION - NURSING HOMES - SLIPS,  
TRIPS & FALLS - HEALTH LAW - NURSING HOME

Long-term-care Facility's Resident Fell 18 Times, Suit Alleged

#### SUMMARY:

RESULT: Verdict-Plaintiff

Award Total: \$500,000

The jury found that Tannen's care was not properly managed. It determined that Tannen's damages totaled \$151,000, which did not include a component for Tannen's pain and suffering. The jury also awarded punitive damages of \$349,000.

#### EXPERT WITNESSES:

Plaintiff: Jeanette Sandor, Geriatrics; Thornwood, NY Perry Starer, M.D., Geriatrics;  
Elmhurst, NY

Defendant: Luigi Capobianco, M.D., Geriatrics; Glen Cove, NY

#### ATTORNEYS:

Plaintiff: Ruth E. Bernstein; Flomenhaft & Cannata; New York, NY (Edith Tannen, Eugene Tannen); David Grossman; Kelly, Grossman & Flanagan, LLP, of counsel to Law Office of Ruth E. Bernstein; Hauppauge, NY (Edith Tannen, Eugene Tannen); Victoria A. Lombardi; Silverman, Pureres & Lombardi; Manhattan, NY (Hebrew Home for the Aged at Riverdale, Hebrew Home for the Aged at Riverdale)

JUDGE: Howard H. Sherman

RANGE AMOUNT: \$500,000-\$66,666

STATE: New York

COUNTY: Bronx

**INJURIES:** Tannen sustained a fracture of her left elbow, a fracture of her right arm's humerus, a fracture of her right hip and a fracture of the left side of her pelvis. She also sustained other superficial injuries. She underwent open reduction and internal fixation of the fractures of her left elbow and right hip. Tannen's husband claimed that his wife suffers permanent residual pain.

#### Facts:

On July 31, 2001, plaintiff Edith Tannen, 76, became a resident of the Hebrew Home for the Aged, which is a long-term-care facility that is located in the Riverdale section of the Bronx. Her residency continued until Jan. 3, 2003. She repeatedly fell during the intervening time. She sustained injuries of an arm, an elbow, a hip and her pelvis. Tannen also suffers dementia, though the condition is not related to anything that did or did not occur during her residency in the long-term-care facility.

Tannen's husband, Eugene Tannen, sued the facility's operator. He alleged that the facility's staff was negligent in its management of his wife's care.

Tannen's counsel claimed that Tannen's residency included 18 incidents that involved falls and/or unexplained injuries. They contended that the facility reported a mere 11 of those incidents, and they claimed that the reports were not properly documented. They also contended that Tannen's family did not receive reports of some incidents, and they specifically claimed that the family was not told that she had fractured her pelvis. They argued that the facility was legally required to report all 18 incidents.

#### SELECTED TOPICS

##### Case Evaluator

Generates a report that compares the outcomes of comparable cases

##### Health

###### Medical Assistance

Rate Setting Guidelines and Procedures of Medicaid Nursing Homes

##### Secondary Sources

###### § 166.Department of Social Services

89 N.Y. Jur. 2d Public Welfare, Etc. § 158

...The State Department of Social Services is responsible for determining eligibility for care and services pursuant to the provisions of the Medicaid law and consistent with standards established by the...

###### § 190.Challenges to reimbursement rates by providers

88 N.Y. Jur. 2d Public Welfare, Etc. § 160

...A service provider may bring a plenary action in its own right against a county for expenses it incurred as a result of improper denial of Medicaid benefits. However, the proper remedy, for the time being...

###### § 159.Department of Health

88 N.Y. Jur. 2d Public Welfare, Etc. § 159

...The Department of Health is responsible under the Medicaid law for establishing and maintaining standards for all hospital and related services pursuant to the article of the Public Health Law govern...

##### See Also Secondary Sources

##### Briefs

###### Brief for Petitioners

1976 WL 101207

Frank B. BEAL, Individually and as Secretary of the Department of Public Welfare, Commonwealth of Pennsylvania; Roger Cull, Individually and as Assistant Deputy Secretary for Medical Services, Commonwealth of Pennsylvania; Glenn Johnson, Individually and as Chief of the Bureau of Medical Assistance, Commonwealth of Pennsylvania; James A. Bersey, Jr., Individually and as Executive Director of the Allegheny County Board of Assistance; and the Supreme Court of the United States, August 20, 1976

...The majority and dissenting opinions of the District Court are reprinted at 378 F. Supp. 173, and are set out in the Appendix at 88-1148. The majority and dissenting opinions of the Court of Appeals en...

###### Brief for Respondents Emma Cooper, et al.

1979 WL 199370

Heidi B. O'BANION, Secretary of Public Welfare, Pennsylvania, Petitioner, v. TOWN COURT NURSING CENTER, et al Supreme Court of the United States August 14, 1979

...The following constitutional provisions, statutes, and regulations are involved, the relevant portions of which are reproduced in the appendix to this brief: United States Constitution, Amendment V Unit...

##### Brief of Appellees

1978 WL 181642

Edward W. MAHER, Commissioner of Social

Tannen's counsel further claimed that the facility's staff routinely ignored procedures that were intended to prevent Tannen's falls. They contended that Tannen's ambulation was supposed to be assisted by a nurse who would hold one of Tannen's arms, but that Tannen was permitted to ambulate without supervision. They also contended that the facility's staff ignored instructions that specified that Tannen was supposed to receive constant observation. They reported that the facility's supervising nurse admitted that such errors had occurred, and they also reported that nurses admitted that Tannen was only assisted during the aftermath of falls. Tannen's counsel argued that the inadequate treatment constituted a violation of the Patient's Rights Statute, New York State Public Health Law § 2801-d. They also reported that the facility's director acknowledged awareness of more than 100 errors that constituted violations of federal and/or local statutes.

Defense counsel contended that Tannen and the facility's other patients received proper care. She claimed that the facility's staff was well qualified to provide such care.

Tannen's husband sought recovery of his wife's past medical expenses, reimbursement of the cost of her residence in the defendant's facility, damages for the deprivation of her rights, damages for her past and future pain and suffering, and punitive damages.

During the jury's deliberations, the parties negotiated a high/low stipulation: Damages could not exceed \$850,000, but they had to equal or exceed \$150,000.

Insurer:

American International Group Inc. Edith Tannen

ALM Properties, Inc.  
Bronx Supreme

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Services of the State of Connecticut.  
Appellant, v. Susan ROE, et al., Appellee  
Supreme Court of the United States  
September 28, 1978

...The three judge district court in this case has declared unconstitutional and enjoined the enforcement of a regulation of the Connecticut Department of Social Services prohibiting Medicaid, or state ma...

See More Briefs

Trial Court Documents

Espada v. Shah

2011 WL 3471227  
Espada v. Shah  
Supreme Court, New York, New York County  
August 03, 2011

...[This opinion is uncorrected and not selected for official publication.] The following papers, numbered 1 to ... were read on the motion to/or ... Cross-Motion: ☐ Yes ☒ No Upon the foregoing papers, 51...

Ostro, v. Sheehan

2011 WL 1821883  
Ostro, v. Sheehan  
Supreme Court, New York, New York County  
April 22, 2011

...[This opinion is uncorrected and not selected for official publication.] Sequence Number: 001 ARTICLE 78 MOTION DATE ... MOTION SEQ. NO. ... MOTION CAL. NO. ... The following papers, numbered 1 to were read ...

12 NY. J.V.R.A. 3:C7, 1995 WL 17999193 (N.Y.Sup.) (Verdict and Settlement Summary)

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Supreme Court, Second Judicial District, Kings County, New York.

DAVIS vs. METHODIST HOSP. ET AL.

12195/92

DATE OF VERDICT/SETTLEMENT: January 19, 1995

TOPIC: FAILURE OF HOSPITAL TO KEEP BEDRAILS ELEVATED - ELDERLY WOMAN FALLS AND SUFFERS FRACTURED HIP - PATIENT CONFINED TO BED OR WHEELCHAIR UNTIL DEATH FROM UNRELATED HEART ATTACK 1 1/2 YEARS LATER.

**SUMMARY:**

Result: \$500,000 VERDICT

**EXPERT WITNESSES:**

Plaintiff's internist: Louis J. Vorhaus, II from NYC.

**ATTORNEY:**

Plaintiff's: Michael Madonna of Sullivan & Liapakis in Manhattan;

Defendant's: Brian Del Gatto of Wilson, Elser, Dicker, Moskowitz & Edelman in Manhattan.

JUDGE: Herbert Kramer

RANGE AMOUNT: \$500,000-999,999

STATE: New York

COUNTY: Kings

**INJURIES:**

FAILURE OF HOSPITAL TO KEEP BEDRAILS ELEVATED - ELDERLY WOMAN FALLS AND SUFFERS FRACTURED HIP - PATIENT CONFINED TO BED OR WHEELCHAIR UNTIL DEATH FROM UNRELATED HEART ATTACK 1 1/2 YEARS LATER.

**FACTS:**

This was an action in which the plaintiff contended that the nurses at the defendant hospital negligently failed to keep the bedrails elevated after the 92-year-old patient was admitted on a Saturday for Monday diagnostic testing. The plaintiff contended that the failure to keep the bedrails elevated in the case of a patient this age violated the hospital's own procedures. The plaintiff maintained that as a result, the patient fell from bed, suffering a **fractured hip** which confined her to either a bed or wheelchair until her death from an unrelated heart attack approximately 1 1/2 years later.

The plaintiff's expert contended that in view of the normal fragility associated with the advanced age of the patient, the bedrails should have been elevated. The plaintiff's expert further maintained that the hospital's own policy provided that bedrails with an individual the patient's age should remain elevated. A nurse testified that when she entered the room, the

bed rails were up. The evidence disclosed, however, that an unidentified nurses' aid was in the room when the nurse arrived and the plaintiff argued that it was clear that this nurses' aid had elevated the bedrails after the incident and that it had been left in the lower position. The defendant countered that the patient had probably attempted to leave

bed by herself and was comparatively negligent. The plaintiff contended that the decedent did not have the call button at her disposal. The daughter testified that the day before, she noted that the clip of the call button was broken and that she pinned it to the bed sheets. The evidence disclosed that the call button is normally attached to the rail. The plaintiff contended that the bedsheets had been changed in the interim and argued that it was likely that the call button no longer remained within the decedent's reach. The decedent suffered a **fractured hip** which was treated by way of open reduction and pinning. The plaintiff contended that the decedent experienced extensive pain and suffering and was confined to either her bed or a wheelchair until her demise from unrelated causes approximately 1 1/2 years later. The daughter maintained that her mother, who resided with her both before and after this incident, was a very proud woman who had been relatively healthy and active for her age until suffering the **fractured hip**. The plaintiff contended that the decedent would perform tasks around the home such as setting the table and would take walks to the store with her at times, contending that after the accident, the decedent felt very useless and helpless. The plaintiff further contended that before the accident occurred, the decedent would enjoy occasional trips to Atlantic City. The plaintiff contended that the decedent experienced significant pain until her demise.

The jury found the defendant 100% negligent and awarded \$500,000 for past pain and suffering. The defendant's post-trial motions are pending.

Jury Verdicts Review Publications, Inc.

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