



# VERDICT SEARCH

## NEW YORK

### SUFFOLK COUNTY

#### MEDICAL MALPRACTICE

##### Failure to Diagnose — Failure to Treat

## Doctors didn't address patient's fatal bleed, estate alleged

**VERDICT**        **\$13,110,000**  
**ACTUAL**        **\$10,277,500**

**CASE**            John Elias, as Admin. of the Estate of Sabine Elias & John Elias, Individually v. Ronald I. Bash MD Obstetrical Gynecological Specialites PC, Dina E. Weiss MD, Charles Mann MD, Eliot L. Birbaum MD, Jyoti P. Ganguly MD, Benjamin Kirschenbaum MD, Philip N. Kurlander MD, Brian S. Geller MD, Episcopal Hlth Svcs & St. John's Episcopal Hospital-Smithtown aka St. John's Episcopal Hospital / Episcopal Health Services & St. John's Episcopal Hospital - Smithtown a/k/a St. John's Episcopal Hospital v. Moses Williams, M.D., Russ Saypoff, M.D., & Suffolk Radiology, P.C., No. 14079/00

**COURT**           Suffolk Supreme, NY  
**JUDGE**           Paul J. Baisley, Jr.  
**DATE**              10/14/2005

**PLAINTIFF**  
**ATTORNEY(S)**    Steven E. Pegalis, Pegalis & Erickson L.L.C., Lake Success, NY

**DEFENSE**  
**ATTORNEY(S)**    Clifford A. Bartlett, Jr., Bartlett, McDonough, Bastone & Monaghan L.L.P., Mineola, NY (St. John's Episcopal Hospital-Smithtown, Charles Mann, Dina E. Weiss, Episcopal Health Services, Obstetrical Gynecological Specialities) Florence B. Gibbons, Rogak & Gibbons LLP, East Meadow, NY (Brian S. Geller, Jyoti P. Ganguly) Stuart J. Manzione, Furey, Furey, Leverage, Manzione, Williams & Darlington P.C., Hempstead, NY (Eliot L. Birbaum) Nicholas J. Marotta, Aaronson, Rappaport, Feinstein & Deutsch L.L.P., New York, NY (Benjamin Kirschenbaum, Philip N. Kurlander)

None reported (Moses Williams, Ronald Bash, Russ Saypoff, Suffolk Radiology P.C.)

**FACTS & ALLEGATIONS** On Jan. 17, 1999, plaintiffs' decedent Sabine Elias, 36, a homemaker, underwent delivery of her fourth child. The Caesarean-style procedure was performed by Dr. Dina Weiss, at St. John's Episcopal Hospital, in Smithtown.

About two hours later, Elias fainted and there was an associated drop in her blood pressure. During the ensuing two days, her blood pressure continued to decrease. Two cardiologists, Drs. Jyoti Ganguly and Brian Geller, were consulted, but Elias' condition did not improve. She died Jan. 19.

Elias' husband, John Elias, acting individually and as administrator of his wife's estate, sued Ganguly; Geller; Weiss; Weiss' practice group, Obstetrical Gynecological Specialties P.C.; one of the group's staff members, Dr. Charles Mann; the doctor who assisted Weiss' performance of the C-section, Dr. Eliot Birbaum; Elias' treating anesthesiologists, Drs. Benjamin Kirschenbaum and Philip Kurlander; her internist, Dr. Ronald Bash; St. John's Episcopal Hospital; and the hospital's operator, Episcopal Health Services. Prior to trial, Bash was dismissed from the case on summary judgment.

Plaintiffs' counsel alleged that Birbaum, Kirschenbaum, Kurlander and Weiss caused the condition that led to Elias' death. They further alleged that those four defendants and Ganguly and Geller failed to timely diagnose and treat the condition, that Mann failed to properly supervise Weiss' work, that all of the non-corporate defendants' failures constituted medical malpractice, that Episcopal Health Services and St. John's Episcopal Hospital were vicariously liable for the non-corporate defendants' actions, and that Obstetrical Gynecological Specialties was vicariously liable for the actions of Mann and Weiss.

Prior to trial, the hospital and Episcopal Health Services initiated, and then voluntarily discontinued, a third-party suit against two radiologists, Drs. Russ Saypoff and Moses Williams, and Williams' practice, Suffolk Radiology P.C.

Plaintiffs' counsel claimed that Elias suffered surgery-related internal bleeding that was not detected or treated. Specifically,

## GREATER METRO AREA

he argued that the C-section produced bleeding from blood vessels supplying the rectus muscle of the abdomen, which bleeding was not recognized and “controlled” at the time the C-section was completed. As such, there was an unrecognized “bleeder” that could and did persist to produce ongoing bleeding. The foreseeable danger is that the ongoing bleeding would produce blood-loss shock that in a continuum would ultimately lead to death.

He contended that the condition, in fact, led to the onset of hypovolemic shock that produced a fatal cardiac arrest, and that post-surgical symptoms were indicative of internal bleeding and should have prompted exploratory surgical intervention.

Had an exploratory surgery been performed, what the doctors would have found was that bleeding from the aforesaid “bleeder” continued producing an accumulation of blood with the abdominal wall and within the adjoining communicating intra-abdominal peritoneal cavity.

At the time of the autopsy, plaintiffs’ counsel claimed, approximately 10 liters of blood had accumulated within the intra-abdominal cavity and an additional massive amount of blood (estimated to be another four to five liters) had accumulated within the abdominal wall. Most importantly, there was no accumulation of blood within the uterus, within any intra-abdominal organ, anywhere else in the body. Even on microscopic study, there was no evidence of bleeding from anywhere but the rectus muscle.

Plaintiffs’ counsel contended that, at the time of a C-section, a pregnant woman’s vascular compartment (bloodstream) should contain about seven liters of blood (and her abdominal cavity should contain no blood). The blood loss caused by the C-section was estimated to be about one-half liter.

When, two hours after the C-section, Elias fainted and an associated drop in her blood pressure was noted, the anesthesiologists ruled out that the drop in blood pressure was related to the anesthetic. After they established at trial that they had not participated in the follow-up management or differential diagnosis process, the action was discontinued against them.

Assistant surgeon Birnbaum also established during trial that he was not involved in the evaluation of follow-up, and that he had no knowledge of any bleeding issue. As such, the action was discontinued against him during the trial as well.

Weiss, on the other hand, called in cardiologist Ganguly to participate in a differential diagnosis to identify the cause of the hypotension. Ganguly excluded a cardiac and pulmonary cause, and both he and Weiss acknowledged that the lab and clinical data revealed no evidence of a systemic bleeding problem (e.g., DIC).

In fact, an initial sonogram of the abdomen revealed evidence of fluid consistent with bleeding into the abdomen (though Weiss interpreted the information as “normal”).

Ganguly advised Weiss to obtain a CT scan, told her that the only explanation for what was occurring was a continued bleed;

and counseled her not to leave the issue unresolved.

A CT scan was taken and interpreted by the radiologist to show an increase in the intra-abdominal fluid, whereas Weiss claimed that she was led to believe there was no change in the intra-abdominal fluid (hence no continued bleeding).

Ganguly did not follow-up and Elias decompensated to the point where she was in critical condition, with a bleeding disorder (DIC) caused by the shock that had existed for 36 hours.

Ganguly, knowing that Elias would die and that Weiss had left the issue unresolved, turned the matter over to his partner, Geller, for follow-up, and took no steps himself to try to get Weiss to “fix” that which had remained unresolved for the past 36 hours.

Meanwhile, Weiss’ senior partner, Mann, made no attempt to learn what had caused the problem, contenting himself with leaving the patient in Weiss’ charge, without making an effort to try to resolve the issue.

Geller, knowing that Weiss had left the problem unresolved, not only did not intervene in an effort to make certain that the bleeding had “stopped” but, at Weiss’ urging, put a catheter into Elias’ lung looking for evidence of an amniotic fluid embolus. It was while Geller was inserting the catheter that Elias finally had a cardiac arrest and died--more than 50 hours after the C-section was completed.

The defense argued that an amniotic-fluid embolism existed, producing first, shock, and then, 36 hours later, a bleeding problem due to DIC.

The plaintiff countered that an amniotic-fluid embolism is a clinical event that first produces heart failure (ruled out by Ganguly) and then produces DIC and bleeding (ruled out by Weiss and Ganguly) and cannot produce DIC 36 hours later. The plaintiff further alleged that, although DIC existed, and potentially can cause bleeding, it did not cause any bleeding in this case as the two communicating massive accumulations of blood were all due to bleeding from the rectus muscle and there was no evidence of bleeding anywhere else.

The defense maintained by Ganguly and Geller was that they were only “consultants” and, therefore, even though they both knew that Weiss had left a bleeding issue unresolved, they they had no additional obligation to do anything to protect their patient.

Ganguly and Geller also contended that their maternity-patient authority and expertise did not extend to performance of exploratory abdominal surgery.

Weiss maintained that she relied on the radiologist and believed that there was no ongoing bleeding and that she was fooled by an atypical presentation of an amniotic fluid embolism event which conspired against the patient (and, by implication, against Weiss).

Mann's defense was that he placed his trust in Weiss and, as such, had no additional obligation to his patient.

All of the defendants noted that Elias was morbidly obese and that she was suffering intractable bleeding. As such, they claimed that exploratory abdominal surgery would have presented an excessive risk.

During the trial, the plaintiffs, Mann, Obstetrical Gynecological Specialties and Weiss agreed to a \$7 million settlement. The plaintiffs also discontinued their claims against Birnbaum, Kirschenbaum and Kurlander. The matter proceeded against Ganguly, Geller, Episcopal Health Services and St. John's Episcopal Hospital.

Injuries/Damages cardiac arrest; death; hypovolemic shock; internal bleeding; loss of parental guidance.

The plaintiffs claimed that Elias suffered internal bleeding. They claimed that the condition led to the onset of hypovolemic shock that produced a fatal cardiac arrest. Elias died Jan. 19, 1999, at age 36. She was survived by her husband and four children: Alexander, then 14; Brittany, 7; Jonathan, 5; and the infant, Sabine.

Plaintiffs' counsel acknowledged that Elias was not employed, but he noted that she performed volunteer work that assisted needy and poor people. Elias' estate sought recovery of damages for Elias' wrongful death, her conscious pain and suffering, and her children's loss of advocacy and guidance. Mr. Elias presented a loss-of-household-services claim.

The defendants contended that Elias' hypovolemic shock was produced by a delayed amniotic-fluid embolism that was a consequence of her pregnancy. Plaintiffs' counsel claimed that the theory was not supported by standard medical science.

**RESULT** The jury rendered a plaintiffs' verdict. Weiss was assigned 50% liability; Mann was assigned 25% liability; Episcopal Health Services and St. John's Episcopal Hospital were assigned a total of 12.5% liability; Geller was assigned 10% liability; and Ganguly was assigned 2.5% liability. The jury determined that the plaintiffs' damages totaled \$13.11 million. The award was reduced by 75%, which represented the cumulative liability of the settling defendants. After addition of the \$7 million that the plaintiffs received via the in-trial settlement, the plaintiffs' net recovery totaled \$10,277,500.

**ALEXANDER ELIAS** \$420,000 past loss of parental guidance  
\$80,000 future loss of parental guidance  
 \$500,000

**BRITTANY ELIAS** \$490,000 past loss of parental guidance  
\$560,000 future loss of parental guidance  
 \$1,050,000

**JOHN ELIAS** \$500,000 past lost household services  
\$1,000,000 future lost household services  
 \$1,500,000

**JOHNATHAN ELIAS** \$1,000,000 past loss of parental guidance  
\$3,500,000 future loss of parental guidance  
 \$4,500,000

**SABINE ELIAS** \$360,000 past loss of parental guidance  
\$1,200,000 future loss of parental guidance  
 \$1,560,000

**SABINE ELIAS (ESTATE)** \$4,000,000 past pain and suffering  
 \$4,000,000

**DEMAND OFFER** \$12,500,000  
 None

**INSURER(S)** **Medical Liability Mutual Insurance Co.** for Birnbaum, Ganguly and Geller  
**Combined Coordinating Council Inc.** for Episcopal Health Services, Kirschenbaum, Kurlander, Mann, St. John's Episcopal Hospital-Smithtown and Weiss

**TRIAL DETAILS** Trial Length: 6 weeks  
 Trial Deliberations: 2 hours  
 Jury Vote: 6-0  
 Jury Composition: 6 female; 6 caucasian

**PLAINTIFF EXPERT(S)** **Dr. Harvey Bennett**, pediatric neurology, Brooklyn, NY  
**John Feigert, M.D.**, hematology, Arlington, VA  
**Gary Goldberg, M.D.**, gynecologic oncology, Bronx, NY  
**Dr. Lawrence Kushins**, anesthesiology, Great Neck, NY  
**G. J. Walker Smith, M.D.**, anatomic pathology, New Haven, CT  
**Brian Sullivan, Ph.D.**, economics, Philadelphia, PA

**DEFENSE EXPERT(S)** **Robert Kramer, M.D.**, cardiology, Oceanside, NY

**POST-TRIAL** Counsel for Ganguly and Geller has expressed an intention to appeal.

**EDITOR'S NOTE** Counsel for Bash, Saypoff, Suffolk Radiology and Williams was not asked to contribute to this report.

-Joanna Bonfiglio



## Attorneys and Counselors at Law

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