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VerdictSearch New York Reporter

Igor Bakalchuk, indiv. and as Adm. of the Est. of Esya Bakalchuk v. Victory Memorial  
Hospital, Rami Atallah, M.D., and Tatyana Ingberman, M.D.; No. 10412/99

**Verdict Date:** 10/24/2002

**Topic:** Medical Malpractice - Wrongful Death; Failure to Timely Diagnose and Treat Gastric Cancer, Wrongful Death

**Result:** \$ 800,000 for pain and suffering 6/0. Liability: Ingberman 50%; Atallah 50% negligent. Atallah settled during trial for \$ 475,000. Jury: 3 male, 3 female.

**Disbursement:** Award Total: \$ 800,000

**Injury:** On 5/22/97, plaintiff's decedent, a 62-year-old homemaker, presented to defendant Ingberman 50% liable at the Victory Memorial Hospital clinic, with complaints of difficulty swallowing solid food and some weight loss. Ingberman recommended an upper gastrointestinal series UGI, which was performed on 5/28/97. The UGI was read as possibly showing an irregular mucosa suggestive of a neoplasm, with a recommendation of an upper endoscopy and biopsy. On 6/9/97, Ingberman referred decedent for a gastrointestinal consult to rule out cancer. On 6/12/97, plaintiff was seen by defendant Atallah 50% liable, who recommended an esophagogastroduodenoscopy EGD, which he performed on 6/17/97. The EGD was interpreted as showing a 3-cm hiatus hernia. Plaintiff was given medication and advised to return if the pain persisted. She was not seen by Ingberman again until 9/5/97 when she made complaints of continued dysphagia. A complete blood count and liver tests were performed. On 9/29/97, plaintiff was seen at the clinic with complaints of bilateral flank pain. An abdominal ultrasound showed hydronephrosis. Plaintiff was seen two more times at the clinic for treatment of nonspecific complaints. She was admitted to Cabrini Hospital on 3/5/98 with a diagnosis of Stage IV gastric cancer with metastasis to the bladder. She underwent an extensive course of chemotherapy. Plaintiff's decedent died on 7/9/99.

Plaintiff claimed that Atallah departed from accepted medical practice by failing to diagnose a lesion and by failing to perform a biopsy. Plaintiff contended that Ingberman departed from accepted medical practice by relying on a non-specific result from the EGD, which was inconsistent with her symptoms and the UGI. Plaintiff claimed that following the UGI, decedent should have been recalled and followed by Ingberman, and that Ingberman should have suspected cancer and initiated appropriate follow-up care. Plaintiff claimed that if the appropriate diagnosis had been timely made, decedent would have been diagnosed while the cancer was at Stage II or III, and would have had a 40% survival rate.

Defendant Atallah denied the presence of a lesion, and disputed the necessity for a biopsy. Defendant Ingberman contended that her care was appropriate, and denied negligence based on her right to rely on the GI series. Decedent, age 64 at the time of her death on 7/9/99, is survived by her husband and one adult son. Offer: \$ 50,000; demand: \$ 1,200,000.

**State:** New York

**Court:** Kings Supreme

**Judge:** Joseph S. Levine

**Plaintiff Attorney:** Mark M. Basicas; Sherman & Basicas, L.L.P.; Manhattan, NY (Igor Bakalchuk, indiv. and as Adm. of the Est. of Esya Bakalchuk)

**Defendant Attorney:** Howard M. Merkrebs; Rivkin, Radler, L.L.P.; Uniondale, NY (Victory Memorial Hospital) Lawrence W. Burnett; Belair & Evans, L.L.P.; Manhattan, NY (Victory Memorial Hospital)

Karen M. Nourizadeh; Garbarini& Scher, P.C.; Manhattan, NY (Victory Memorial Hospital)

**Plaintiff Experts:** Dr. Anthony Azar; Emergency Medicine; Manhattan, NY  
Dr. Richard Hirschman; Oncology; Manhattan, NY

**Defendant Experts:** Dr. Paul Bader; Oncology; Forest Hills, NY