

## EPHRAIM J. FINK

SPECIAL COUNSEL



### AREAS OF PRACTICE

Premises & Retail Liability  
Automobile Liability  
Trucking & Transportation Liability  
New York Construction & Labor Law  
Product Liability  
Health Care Liability  
Environmental & Toxic Tort Litigation  
Miscellaneous Professional Liability

### CONTACT INFO

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Purchase, NY 10577

### ADMISSIONS

Connecticut  
1999

New York  
2000

U.S. District Court of Connecticut  
2001

U.S. District Court Eastern District  
of New York  
2003

U.S. District Court Southern  
District of New York  
2003

U.S. Supreme Court  
2008

### EDUCATION

New England School of Law (J.D.,  
1999)

Syracuse University (B.A., 1996)

### HONORS & AWARDS

The Best Lawyers in America®,  
Insurance Law  
2023-2025

### OVERVIEW

Ephraim Jacob (“EJ”) Fink has been a fixture in the Connecticut and New York Courts since 2000.

Over the course of his career, he has represented dozens of insurance carriers and their policyholders, as well as corporations, product manufacturers, and healthcare facilities in matters involving negligence and contract claims. EJ also defends owners and contractors in construction accident cases involving New York Labor Law. He has represented numerous individuals in the areas of personal injury, mold litigation, family law, employment, estate matters and education.

EJ focuses on guiding clients throughout the entire legal process, from the inception of a claim to the close of a file. His vast experience allows him to counsel clients on the most strategic and effective course of action for efficient resolution, whether through settlement negotiations, mediation, arbitration or jury trial.

Early in his career, EJ clerked for the Superior Court of Connecticut in the Bridgeport, New Haven and Stamford Judicial Districts. During this time, he primarily assisted in criminal law research and writing, and he provided legal support in the high-profile and sensationalized Michael Skakel-Martha Moxley murder case. He then spent seven years at one of the country's largest insurance defense firms, managing and trying a wide variety of cases throughout the five boroughs of New York. The majority of these claims involved negligence, professional liability, product liability, employment, commercial contract disputes and medical malpractice liability matters. EJ also defended New York City area hospitals at Environmental Control Board hearings.

EJ graduated from Syracuse University's Newhouse School of Public Communications with a degree in journalism and thereafter obtained his *juris doctor* at New England Law–Boston where his dean's list grade average earned him an associate editor position on the *New England Journal on Criminal and Civil Confinement*. EJ also took part in a prosecution clinic where the DA's office permitted him to conduct a DUI bench trial as a student.

EJ is a licensed member of the Bar in Connecticut and New York State and is also admitted to practice in the Federal District Courts of Connecticut, New York's Southern and Eastern Districts, and the Supreme Court of the United States.

### CLASSES/SEMINARS TAUGHT

*Hearsay and Social Media Evidence*, National Business Institute (NBI), December, 2018

*Educational Law*, National Business Institute (NBI), May, 2015

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## ASSOCIATIONS & MEMBERSHIPS

Connecticut Bar Association

Council on Ethical Billing,  
Fellowship Member

Fairfield County Bar Association

New York State Bar Association

Trial Lawyers Association

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## YEAR JOINED

2020

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## COMMUNITY SERVICE

Project Music (non-profit), Board  
Member, Finance Committee

## RESULTS

### Emotional distress claims barred in case where dog was run over by delivery truck.

#### **General Liability January 20, 2023**

The plaintiff pet owners brought claims of emotional/bystander distress and recklessness against the delivery service after personally witnessing the incident that tragically killed their family dog. We filed a Motion to Strike (equivalent of 12b(6) in State of Connecticut Superior Court, Judicial District of Fairfield at Bridgeport), citing appellate authority that, because dogs are personal property and bystander distress arises out of human-to-human relationships, plaintiffs were barred from alleging and recovering any kind of emotional distress damages.

### Defense verdict at trial for national public transportation company.

#### **Trucking & Transportation Liability November 10, 2022**

Breach of contract claims were brought in the Connecticut Superior Court. The plaintiff had to purchase public transportation tickets after his car broke down. He claimed that he and his family were subjected to many alleged unsavory conditions and ordeals during their trip from Tennessee to Connecticut. He also claimed that the bus depots along the way were unsafe, failed to enforce mask mandates and exposed his children to people exhibiting odd behavior.

### Defense obtains a minority view win in a personal injury/dram shop action in the Connecticut Superior Court.

#### **Hospitality & Liquor Liability February 16, 2022**

After suffering severe brain damage in a motor vehicle accident, the plaintiff brought claims of negligence and recklessness against our restaurant client and other various defendants, including the owners and operator of the offending vehicle, who was charged with multiple criminal offenses (still pending) for operating under the influence. On behalf of our client, cross-claims were asserted for contribution and indemnification.

### Mattress retailer sleeps soundly after winning summary judgment.

#### **Premises & Retail Liability February 16, 2022**

Despite dueling expert affidavits, Marshall Dennehey attorneys won summary judgment in a premises matter in the Connecticut Superior Court Middlesex Judicial District. The plaintiff claimed negligence against our client, a mattress retailer, for a hazardous and defective condition in the store. The defect alleged was a tile-carpet transition claimed to be approximately one-half of an inch in differential, as well as a "slope" in the continuing carpet that created a friction co-efficient that caused the plaintiff to fall.

## **SIGNIFICANT REPRESENTATIVE MATTERS**

Obtained a summary judgment in a premises liability case that had been in litigation for almost a decade. The plaintiff claims to have tripped and fallen on June 1, 2015 in a supermarket chain store in Newburgh, NY on the corner of a pallet/box of watermelons in the store's produce section where customers first walk in. There was video capturing the incident which the court had as an exhibit.

Notably, the plaintiff admitted she did not see the pallet or the corner of it and was not looking where she was walking. After falling, she refused medical attention and continued shopping and walked home. She came back the next day with her husband to report the incident. She regularly used this supermarket every week. Ultimately, she underwent multiple surgeries including cervical fusion and her attorney's demand was \$4 million. The defense motion argued that the watermelon pallet was a temporary merchandise display which was open and obvious to all to be seen with common sense.

Indeed, customers walked by the pallet display just minutes before and after the plaintiff's accident at a rate of dozens per day. The store put the watermelons out in this manner as part of display policy and because the watermelons are delivered in cartons on pallets that cannot be taken apart. The plaintiff argued in opposition that the pallet was a hazardous defect which the store created and had notice of. They submitted an expert engineer claiming the display violated American Society of Testing Materials (ASTM) designation F1637-10 regarding safe walkway surfaces. In reply, E.J. submitted a rebuttal engineer that demonstrated the ASTM standard asserted by the plaintiff applied to permanent structures like floors and buildings -- not the temporary pallet -- and that the standard did not exist on the day of the accident. Moreover, the ASTM was never codified in NY state law or local Newburgh ordinance. In granting summary judgment, the court concluded that while a landowner must act reasonably in maintaining its property in a reasonably safe condition, it is not an insurer of ordinary obstacles that are readily apparent as a matter of common sense and visibility.