

Neck Injury Verdict for \$175,000 Affirmed on Appeal in Pedestrian Knockdown Lawsuit where Jury Awarded \$120,000 for Future Medical Expenses but Nothing for Future Pain and Suffering

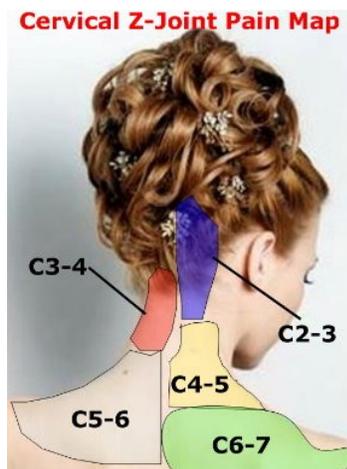
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On November 20, 2001, Yuko Yamamoto, a 37 year old registered nurse, was walking to work in Manhattan when she was struck and knocked to the ground by a taxicab. In her lawsuit to recover pain and suffering damages for her resulting neck injury, a **judge determined that no trial would be needed on the issue of liability because it was obvious that the accident was wholly the fault of the taxi driver.**

The only issue that required a jury, therefore, was the amount of damages to which the plaintiff was entitled. Ms. Yamamoto presented to the jury a somewhat typical fact pattern for people who have sustained non-catastrophic, non-fracture injuries in motor vehicle accidents:

- complaints of neck and/or back pain, ambulance to the hospital, x-rays negative, treated and released to home within a few hours
- follow-up medical treatment within a day or so
- a short period of missed work (here, eight days),
- extensive chiropractic treatment over the ensuing years (here, three years)
- positive test results such as a nerve conduction study and an MRI with significant findings (here, herniations and bulges at C3-7 with radiculopathy, pain and weakness)
- range of motion deficits objectively measured (here, as much as 50% loss of extension)
- continuing complaints of pain and disability but no surgery as of the trial date

Here are the areas injured in the case of Ms. Yamamoto:



Many cases with fact patterns like those above are routinely dismissed before trial because judges find that the plaintiffs' injuries do not meet the so-called **"serious injury" threshold** required in car accident cases under New York's [Insurance Law Section 5102 \(d\)](#).

The defendant in Ms. Yamamoto's case sought such a dismissal but his motion for summary judgment was denied in November 2007 because, the judge held in [Yamamoto v. Carled Cab Corp.](#), there appeared to be enough facts so that a jury could conclude that Ms. Yamamoto's injuries met the statutory standard. At the same time, the judge granted plaintiff summary judgment finding that the accident was wholly the fault of the taxi driver.

This is what a herniated cervical disc looks like:



At trial, plaintiff established and the **jury found that she suffered a serious injury** in that she had a significant limitation of a body function or system (her cervical spine) and also a permanent consequential limitation of her cervical spine.

After plaintiff's attorney requested a total of \$500,000 in damages, on February 6, 2008, **the jury awarded her \$175,000 as follows:**

- \$50,000 for past pain and suffering (almost six years)
- \$ -0- for future pain and suffering
- \$5,000 for past medical expenses
- \$120,000 for future medical expenses

On appeal, the defense argued that the future medical expense award was speculative and should be tossed out and also that the jury acted properly in declining to award anything for future pain and suffering.

Plaintiff argued that the future medical expense award was fair and proper (her chiropractor had testified she'll need about \$6,000 a year in treatment and testing for an unspecified period) and that the failure to award anything at all for future pain and suffering was unreasonable. **Plaintiff suggested that an award of \$300,000 for future pain and suffering would be reasonable** and should be ordered or else there should be a new trial on that issue.

In an [appeals court decision this week](#), the jury's verdict was affirmed in its entirety. The judges stated that the failure to award any damages for future pain and suffering was supported by the **evidence which showed plaintiff had:**

- not altered her lifestyle,
- still worked the same job,
- cared for her young child and
- participated in her daily activities.

Addressing the apparent inconsistency in the jury's award of substantial damages for future medical expenses but noting for future pain and suffering, **the appellate judges stated that the jury could have concluded that funding regular chiropractic treatments would alleviate plaintiff's future pain.** This is an amazing statement. And it is inherently illogical. The court is saying that medical treatment will be necessary for 20 years and defendant should pay \$120,000 for such treatment but that plaintiff will have no pain in the future because the treatment for her pain and disability will be paid for. That makes no sense.

If substantial medical treatment is needed in the future that's because plaintiff will be in pain and somewhat disabled; otherwise there's no need for the treatment and the \$120,000 award should have been overturned. If, however, the treatment is needed then that's because there's expected to be some pain and suffering in the future.

Some award for future pain and suffering – anything but nothing – was required. The jury's failure to award anything for future pain and suffering in this case was, at a minimum, inconsistent with its substantial award for future medical expenses.

As we recently discussed, [here](#), this very same appeals court just a few weeks ago overturned a jury verdict in a New York personal injury lawsuit where it found that the verdict was inconsistent and appeared to represent the jury's attempt at compromise in a case with questionable liability and significant damages. And the same court in [Lamanna v. Jankowski](#) (2008) made the same finding where a jury found "permanent consequential limitation of use" yet failed to award any future pain and suffering damages. A different appeals court (the Appellate Division for the Second Department) recently ruled that the failure to award any damages for future pain and suffering cannot be reconciled with the finding of permanent injury, as we discussed [here](#).

While liability was not at all questionable in [Yamamoto v. Carled Cab Corp.](#), it does appear that either the jury engaged in an impermissible compromise or that its verdict as to future pain and suffering was simply against the overwhelming weight of the evidence (evidence that the jury itself found required an award of \$120,000 for medical treatment expenses over a 20 year period). In any event, **the verdict was wildly inconsistent.**

Ms. Yamamoto must be justifiably perplexed and upset with the court's ruling denying her future pain and suffering claim and she's likely considering a motion to appeal this decision to the state's highest court, the Court of Appeals. Under [CPLR 5602](#), however, the standard for granting such a motion is quite strict and the prospect of success is dim. **We will follow this case for significant developments.**