

## New York Injury Cases Blog

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### Death Case Verdict: \$5,000,000 for 4 1/2 Years of Pain and Suffering (While in a Coma) - Will Not Stand on Appeal

A Westchester County jury recently returned a verdict of **\$5,000,000** in favor of the estate of a woman who died because of medical malpractice. **It will not stand on appeal.**

In **Schaffer v. Stony Lodge Hospital** (Supreme Court, Westchester County; Index # 4155/99; 11/6/08), a 68 year old woman with long standing depression went to a small psychiatric hospital (Stony Lodge) for a change of her anti-depressant medication. While there, she suffered a seizure and so was transferred to a community hospital (Phelps Memorial Hospital). There, she had another seizure, a heart attack and then became comatose and never regained consciousness. She died 4 1/2 years later.



Liability for the medical malpractice in failing to timely treat the hyponatremia was clear enough so **Phelps Hospital and one of its doctors settled early on for \$1,750,000.** The main doctor who committed the malpractice, though, Narain Batheja, refused to settle and the case came to trial and the jury found that Mrs. Schaffer's suffering, albeit while comatose, had a value of \$5,000,000.

No doubt **this case will be appealed and there are several issues:**

- Was there enough evidence that Mrs. Schaffer actually experienced conscious pain and suffering while comatose? Plaintiff points to statements from family members and nurses that Mrs. Schaffer followed her caregivers with her eyes and cried at times. The defense will no doubt point out that there was no medical examination pre-death as to level of consciousness.
- The other issue that will be heavily contested on appeal is the reasonableness of \$5,000,000 as

## pain and suffering damages for 4 1/2 years while comatose

Here are some cases that indicate that the **\$5,000,000 may not withstand an appeal:**

- [Jump v. Facelle](#) (Appellate Division, 2nd Dept.; 2002) - In this case the court held that \$1,300,000 was reasonable for eight months of pre-death pain and suffering, including persistent abdominal infection, several surgeries, and a permanent colostomy and bed sore.
- [Ramos v. Shah](#) (Appellate Division, 2nd Dept.; 2002) - The court ruled that \$900,000 pre-death pain and suffering was too high and that \$450,000 was proper and reasonable in a case in which a decedent died due to medical malpractice resulting in a cardiac arrest and his lapse into a coma for several days before death. There was some testimony that the decedent had some level of consciousness for several days.
- [Weldon v. Beal](#) (Appellate Division, 2nd Dept.; 2000) - In this medical malpractice case, the Kings county jury awarded a brain damaged plaintiff \$10,500,000 for future pain and suffering despite the fact that she was in a vegetative state. There was evidence that she had some level of awareness (and that she's need almost \$2,000,000 of medical expenses for the rest of her life).

### **Insider Information:**

- Plaintiff's attorney in [Schaffer v. Stony Lodge Hospital](#) would have accepted a total of \$3,000,000 to settle all claims - meaning that defendant Batheja **could have settled for \$1,250,000** (and I hear that plaintiff's counsel at trial would have reduced that figure to \$750,000).
- In this case, the non-settling doctor's insurance carrier, Frontier Insurance Company, was stubborn and would not concede liability in a case in which those involved on all sides now tell me was indefensible.
- The plaintiff's husband was also awarded **\$3,000,000 in addition for loss of consortium**. That's the claim of the non-injured spouse for loss of services and it usually involves the disruption to the marriage, the many hours spent caring for the injured person, the lack of intimacy and the like. It's usually around 10% of the injured spouse's pain and suffering verdict and the appellate courts can and will determine that loss of services verdicts should be reduced in appropriate cases. This will be one of those cases if not settled before an appeal is concluded. In my experience, **this loss of services claim will end up nowhere near \$3,000,000.**

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