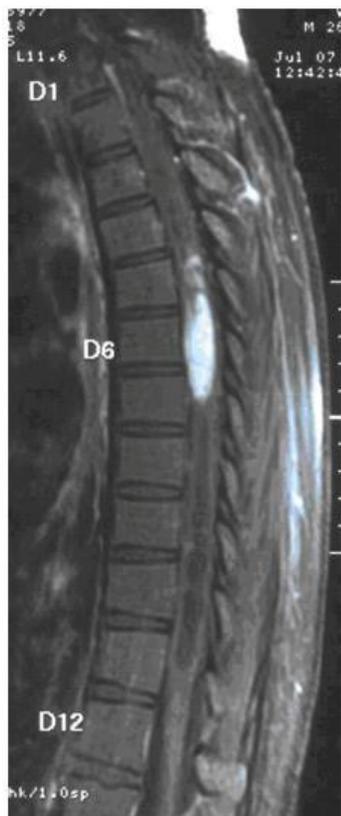


## [Delayed Diagnosis of Spinal Tumor Results in \\$47,950,000 Medical Malpractice Jury Verdict - Defendant Appeals Claiming Lack of Causation and Excessive Damages](#)

Posted on March 22, 2010 by [John Hochfelder](#)

**Shania-Gay Ffrench** was 21 years old on February 3, 2000 when she went to the emergency room at Mount Vernon Hospital complaining of back pain. Doctors there suspected uterine fibroids and she was told to follow up with her primary care physician and her gynecologist. She did so. She saw her internist **Keith Edwards, M.D.** who referred her to an orthopedist and she saw her gynecologist who performed a lysis of adhesions. Ms. Ffrench's pain persisted, though, and the cause was never diagnosed until a year later when an MRI revealed that her **back pain was a product of a spinal tumor – an intramedullary astrocytoma (the white spot on the MRI).**



The tumor took three surgeries and six years until it was finally and fully removed in 2007. Ms. Ffrench was left substantially unable to use her legs and she blamed her doctors for failing to diagnose and remove the tumor early enough so that her injuries could have been avoided.

A medical malpractice lawsuit was started (**Ffrench v. Agnant** - Supreme Court, Westchester County; Index # 14401/02) against nearly everyone involved in Ms. Ffrench's care since 2000

After several years of litigation, on July 23, 2007, [the judge issued an order absolving the neurosurgeon who removed the tumor and his hospital from any fault.](#)

**Four defendants settled after opening statements** for a total of \$875,000, as follows:

- \$600,000 by the gynecologist and his practice,
- \$100,000 by the initial hospital and
- \$175,000 by a primary care doctor.

**Dr. Edwards refused to settle and the trial proceeded against him alone.**

**Dr. Edwards based his defense on the fact that he had seen Ms. Ffrench only three times –** on February 7, 2000 (for back pain), February 26, 2000 (to clear her for gynecological surgery) and July 6, 2000 (for a headache) and he never treated her again. Furthermore, he claimed, plaintiff herself bore responsibility because, in January 2001, her new primary care physician

told her to see a neurologist and she didn't do so until July 2001 when the MRI confirmed the tumor.

On August 31, 2001 French underwent surgery with a neurosurgeon who planned to do a biopsy and “debulk” or remove as much of the tumor as possible. During surgery, though, a **somatosensory evoked potential (SSEP) test was abnormal, indicating that the spinal cord had become dysfunctional.** The surgery had to be stopped.

French remained **hospitalized for six months** and then underwent **four months of rehabilitation.** As of trial in July 2009, she was **able to walk only short distances and only with forearm crutches** and leg braces. She **frequently required the assistance of a wheelchair.**



The **jury returned a verdict finding Dr. Edwards 30% at fault**, the original hospital 25%, the gynecologist and his practice 25%, a primary care doctor 10% and the orthopedist 10%.

Then, the **jury assessed damages in the total sum of \$49,750,000** as follows:

- **\$29,500,000 pain and suffering** (\$4,500,000 past – 8 years, \$25,000,000 future – 50 years),
- **\$18,450,000 medical expenses and rehabilitation services** (\$450,000 past, \$18,000,000 future)

Defendant made a **post-trial motion** under New York’s **CPLR 4404** seeking a judgment of dismissal notwithstanding the verdict arguing that:

- the plaintiff had failed to establish proximate cause - i.e., that his alleged negligence (failing to refer plaintiff for neurological testing) actually caused plaintiff’s injuries,
- the verdict was against the weight of evidence because there were no medical records substantiating plaintiff’s claim that she complained of neurological symptoms (such as numbness in her legs) that would have led him to refer her for neurological testing, and,
- the amount of damages was grossly excessive

The [trial judge denied the post-trial motion in a brief opinion](#) that was devoid of any meaningful discussion of his reasoning. It's not unusual for trial judges to give such short shrift to post-trial motions. Indeed, it's well known and oft-stated that instead of delving into the issues, discussing the parties' respective points and comparing the verdict amounts with other relevant prior cases, [trial judges routinely leave it to the parties to appeal to the appellate division post-trial issues such as whether the jury's verdict was against the weight of credible evidence or its damages awards were unreasonably excessive or minimal.](#)

A **notice of appeal has been filed** and if this case doesn't settle then the appellate court will rule upon liability issues as well as damages and [the appellate judges will most likely conclude that the \\$29,500,000 pain and suffering verdict is unreasonably excessive.](#) Our analysis of appellate court decisions in which pain and suffering verdicts in the several millions of dollars range have been upheld indicates that the Ffrench verdict would be drastically reduced.

Generally, **the largest sustained pain and suffering verdict cases involve paraplegia or quadriplegia.** Here are some recent examples:

- [Miraglia v. H&L Holding Corp.](#) (1st Dept. 2007) - **\$10,000,000** for construction worker rendered a paraplegic after being impaled on a rebar
- [Ruby v. Budget Rent A Car Corp.](#) (1st Dept. 2005) - **\$10,000,000** for 25 year old rendered a paraplegic
- [Desiderio v. Ochs](#) (1st Dept. 2002) - **\$4,500,000** for infant with devastating neurological injuries including loss of gag reflex, inability to eat without feeding tube, inability to walk without assistance and brain damage

In contrast to the plaintiffs in [Miraglia](#), [Ruby](#) and [Desiderio](#), Ms. Ffrench, while undoubtedly in great pain and suffering tremendously, can walk with assistance, attend to her job (at a desk for a health insurance plan), cook and is able to participate - albeit with much difficulty - in many other activities of daily living. It's extremely unlikely that an appellate court would sustain even one-half of the future pain and suffering award in the Ffrench case. And my guess is that the \$29,500,000 would be cut by a lot more than one-half.

A so-called [collateral source hearing](#) is set in this case for next month. That's where the judge will hear evidence about whether any part of the verdict for medical expenses and rehabilitation services will be replaced or indemnified by collateral sources such as insurance. If so, the verdict will be reduced to that extent.

#### **Inside Information:**

- Dr. [Edwards asserts that plaintiff never proved what actually caused the loss of function](#) in her legs; he also claims that damages against him should be limited to any worsening of plaintiff's condition from February 2000 to August 2001 rather than the sequelae of the

surgery. Resolution of these issues on appeal may drastically affect the ultimate outcome in this case.

- After trial, plaintiff's attorney requested that the judge allow him an increased legal fee (i.e., one-third of the recovery instead of the lesser statutorily prescribed sliding scale fee) due to the complexity of the case and the unusual amount of effort required to bring it to trial. Joined by his client and without opposition, the trial judge approved the request. It seems that plaintiff had a change of heart (and attorneys) because thereafter she filed a motion to reargue (denied) and a notice of appeal (pending) seeking a reversal of the fee increase decision.
- Before trial, plaintiff sought \$950,000 to settle with Dr. Edwards. During trial, that settlement demand dropped to \$600,000. Now, Dr. Edwards is exposed to a judgment of almost \$15,000,000 (his 30% portion of the verdict).
- Dr. Edwards has \$2,000,000 of malpractice insurance. Given the size of the verdict and the several years spanning the claimed negligence, though, plaintiff's counsel may try to implicate two or more years of malpractice coverage so that there would be more coverage, perhaps a total of \$4,000,000. Such claims are not unusual in cases like this but here it would likely fail because of the very short period in which Dr. Edwards actually treated the plaintiff.
- Plaintiff's attorney, Christopher Meagher, obtained another huge malpractice verdict in Westchester County in December 2009 - **\$61,000,000** (including \$22,000,000 for pain and suffering) in Swanson v. Northern Westchester Hospital Center (Index # 16743/07) for a six year old boy with brain damage.