

Malpractice Lawsuit against New York Podiatrist Results in \$3,000,000 Pain and Suffering Verdict for College Student; Trial Judge Orders Reduction to \$1,000,000

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

On July 29, 2002, then 16 year old Jennifer Gillette underwent a procedure by podiatrist Greg Atlas in which a **wart was removed from the side of her left heel.**

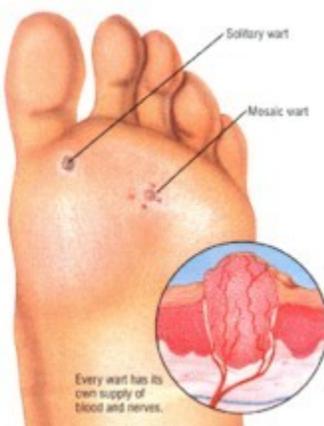
Complications developed, she was forced to undergo five new surgeries and **Jennifer ended up suing Dr. Atlas claiming that he negligently performed the procedure and that he never properly informed her of the substantial risks involved in the way he did it.**

Seven years later, on August 18, 2009, an Orange County, New York **jury awarded her \$3,000,000 for her pain and suffering (\$1,500,000 past, \$1,500,000 future – 55 years).**

The jury based liability only on the so-called **informed consent claim.** That's a long-standing legal principle under which a doctor may be held liable to his patient when:

1. he fails to disclose alternatives to the treatment given and fails to inform his patient of the reasonably foreseeable risks associated with the planned procedure,
2. a reasonably prudent patient would not have undergone the treatment had she been fully informed, and
3. the lack of informed consent is a proximate cause of the injury.

A plantar wart caused by the human papilloma virus (HPV) that appears as a small lesion on the foot and typically presents as a cauliflower. It looks like this:



Plantar warts tend to be painful and can be spread in showers and swimming pools. Treatment

usually involves peeling away of the dead surface skin cells with chemicals, acid or liquid nitrogen. Lasers are often used too. Surgery is a last resort.

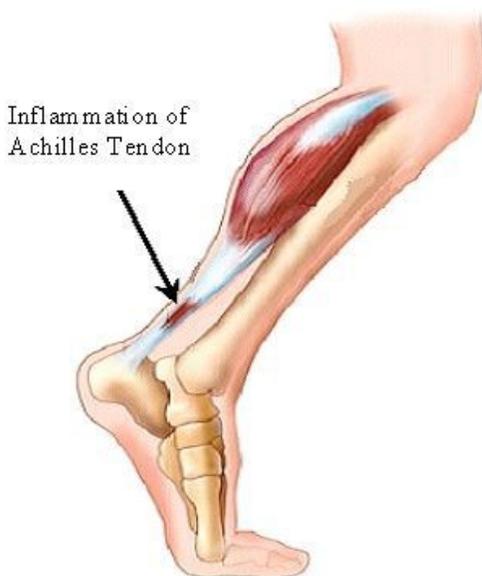
In Jennifer Gillette's case, the doctor excised the wart with a scalpel, a procedure she said at trial she was unaware of until the moment it happened. She had expected laser treatment only.

Dr. Atlas told the jury that he told Jennifer (and her mother) that the risks of the procedure involved skin infection, scarring and repetition of the procedure. **Critically, though, he did not tell her that the excision procedure could result in the rupture of her Achilles tendon and he did not tell her about alternate, conservative, methods he could have used to remove the wart.**

Here's what happened after the office procedure:

- development of hypertrophic and keloid scar
- three rounds of steroid injections into the back of her heel overlying the Achilles tendon
- development of soft tissue deficiency, tendinosis and Achilles tendon degeneration

Jennifer underwent **five surgeries** before trial including a Haglund's type excision (removal of a bony protuberance of her calcaneus - the heelbone) and an Achilles tendon debridement, repair, transfer and release.



For the **seven years** from the date of the wart excision procedure until trial, Jennifer was substantially restricted to a wheelchair, crutch and/or cane assisted ambulation. When standing and walking could be accomplished, it was only for short periods of time.

As to Jennifer's claim for **future pain and suffering**, the jury heard credible testimony from experts that she'd forever suffer:

- permanent loss of function of her left big toe (due to the tendon transfer surgery),
- less functional and likely failure or degeneration of her Achilles tendon (now a transposed, smaller tendon),
- chronic pain in the Achilles insertion, and
- inability to return to any of the many recreational endeavors previously enjoyed without restrictions.

While the jury returned a verdict for every dime of the \$3,000,000 requested in summation by plaintiff's attorney, the trial judge found the award excessive and reduced it to \$1,000,000 (\$500,000 past, \$500,000 future) [Gillette v. Atlas - Supreme Court, Orange County, 1/22/10; Index # 3844/06.]

Under New York's CPLR 4404, the trial judge's decision is conditional. That means that either the plaintiff agrees to the reduction or there will be a new trial (limited to determining anew the amount of damages).

Inside Information:

- the jury found that the defendant had not committed malpractice either by determining to remove the wart by scalpel and laser or by injecting steroids afterwards but they did find that appropriate information had not been given to Jennifer and that had she been given the information she would not have consented to the scalpel excision procedure
- the defendant had offered plaintiff a high-low agreement under which, no matter what the verdict, the defense would pay at least \$500,000 but no more than \$1,500,000 – meaning that if there were a defense verdict Jennifer would nonetheless receive \$500,000 and if, as it turned out, the jury awarded more than \$1,500,000 then she'd get \$1,500,000
- My sources tell me this case will now settle for \$1,000,000. If so, Jennifer should have taken the high-low deal under which she'd have received \$1,500,000