$3,000,000 Pain and Suffering Verdict Sustained on Appeal for Ten Year Old New York Girl Injured in Horrifying Subway Accident

Posted on October 22, 2009 by John Hochfelder

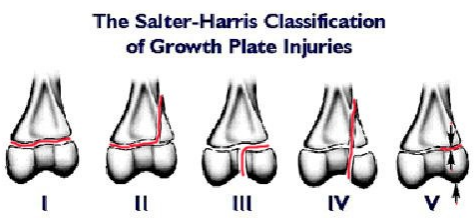
November 4, 2001 began as a great day for ten year old Leonari Jones. She was an active, playful, happy kid who had a sleepover party and was on the subway returning home to the Bronx with her friends and babysitter. **When the train pulled in to her stop at 174th Street, though, Leonari's life took a tragic turn.**

As she exited the subway car, Leonari placed her left foot on the platform but **her right foot became caught between the doors. She tried to dislodge her leg but couldn't and the train pulled out** so she started to hop on her left leg to keep up with the increasing speed of the moving train.

This shows similar city subway doors but Leonari wasn't going in, she was trying to get out:

What followed was terrifying and gruesome. I will spare you all of the details. The train sped up to 30 miles per hour and dragged Leonari about 300 feet before it stopped and she fell 30 feet to a secondary platform. During those terrifying moments, Leonari's skin was ripped off and her leg was broken as her hands, stomach and body were dragged, burned and scraped along the subway platform. **She was rushed to the hospital where she was diagnosed with:**

- <!--[if !supportLists]--><!--[endif]-->Right leg **Salter II fracture of the distal tibia** with the fracture line extending through the tibia and into the growth plate
- <!--[if !supportLists]--><!--[endif]-->Second degree wounds and abrasions akin to **burn injuries to approximately 10% of her body surface area**



This poor 10 year old then underwent a nine day hospitalization in which her right leg was placed in a cast from her torso to her ankle and, every four to six hours, she underwent excruciatingly painful tissue debridement to treat her burns. To the extent she could sleep at all, Leonari's sleep was interrupted constantly with nightmares and screaming. At trial, she claimed she suffered significant post-traumatic stress symptoms.

Leonari started using crutches after two months (due to hand bandages she could not use them before) and finally after five months she began to walk unassisted (though with a permanent limp).

Trial on damages only resulted in a Bronx County jury verdict on August 14, 2006 in the sum of **$3,000,000** for pain and suffering ($1,500,000 past – 5 years, $1,500,000 future – 63 years). In a decision released two days ago, the appellate court in **Jones v. New York City Transit Authority** affirmed the entire award and declared that the amount did not deviate materially from what would be reasonable compensation (the standard for review under **New York's CPLR 5501**).

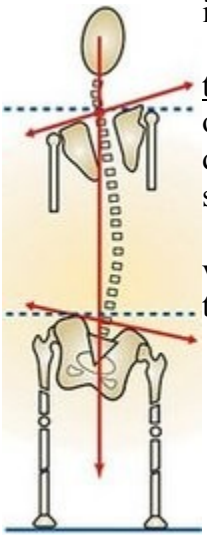
This is a **stunning decision**, especially in view of several facts not mentioned:

- <!--[if !supportLists]--><!--[endif]-->Plaintiff never underwent any surgery for either her leg fracture or her burns
- <!--[if !supportLists]--><!--[endif]-->Plaintiff didn't undergo any psychological treatment until January 2005 when she first did so at the urging of her lawyers

We know that New York juries can and do render amazingly high (and low) pain and suffering verdicts from time to time; however, that's why CPLR 5501 was enacted and that's when appellate courts get into the action and modify the awards up or down as they see fit. **Why in this case, though, did the appellate court allow $3,000,000 in pain and suffering damages to stand without any modification downward in view of what appears to be a non-catastrophic injury case?** This is neither a case dealing with a paralyzed person, nor one on lifetime pain medication, nor one with an inability to walk at all.

Digging into all of the facts and reviewing the parties' briefs on appeal, **we have uncovered the following additional facts not mentioned in the court's decision:**

1. <!--[if !supportLists]--><!--[endif]-->Battle of medical experts: Plaintiff's orthopedic expert was world-renowned **David P. Roye, M.D.** He's a pediatric orthopedist who operates on kids 200 times a year. The defense orthopedist (who performs 70% of his work in the litigation field) conceded on the stand that Dr. Roye has superior knowledge in this field.



2. <!--[endif]-->Plaintiff's broken leg was two centimeters shorter than her other leg due to the accident, and Dr. Roye, a published expert on leg length discrepancy, testified that this was quite significant and disabling, resulted in pelvic obliquity (a crooked pelvis) and will require surgery to repair.
3. <!--[if !supportLists]--><!--[endif]-->Plaintiff was previously very active in multiple sporting activities, can no longer engage in any of them and now walks with a limp.

4. <!--[if !supportLists]--> Plaintiff's right knee dislocated many times since the accident and she will require at least one knee surgery in the future.
5. <!--[if !supportLists]--> Plaintiff produced a plastic surgery expert who testified that her scars all over her abdomen, underneath her breasts and on both legs are permanent. Defendant failed to produce an expert to rebut this testimony and the jury was able to evaluate the scars in person at trial.
6. <!--[if !supportLists]--> Both parties presented expert testimony as to plaintiff's psychological injuries. Plaintiff's expert testified that she has a textbook case of post-traumatic stress syndrome with significant symptoms including nightmares, persistent fears, sleep problems, difficulty relating to people, concentration problems and flashbacks; while the defense expert disagreed on the basis of a 20 minute examination without having reviewed the medical records.
7. <!--[if !supportLists]--><!--[endif]-->Plaintiff's mother testified that as a social worker with clinical training, she sought faith based counseling before turning to psychotherapy for her daughter. Clearly, this blunted the defense argument about the lack of "formal" counseling until her lawyers suggested it.

The defense conceded that this was a horrible incident and that the plaintiff deserved compensation for her pain and suffering; however, they argued that $3,000,000 was unreasonably high. In what may have been a **tactical mistake**, the defense suggested on appeal that they only challenged the future pain and suffering award of $1,500,000 and that the past pain and suffering sum (also $1,500,000) was reasonable. Then, they suggested that the court view the future pain and suffering verdict as having been rendered by the jury in three equal parts for orthopedic, dermatological and psychological injuries (i.e., $500,000 for each category). Finally, the defense asked the court to reduce the future pain and suffering award from $1,500,000 to $550,000 ($350,000 orthopedic, $100,000 each for dermatological and psychological).

The court must have considered the $350,000 concession by the defense for future orthopedic pain and suffering against the $500,000 (hypothetical) award to be a minor variance and not worth reviewing and then it simply declined to modify the (hypothetical) awards of $500,000 for future dermatological pain and suffering (against a $100,000 concession and 63 years of scars and disfigurement) and $500,000 for future psychological pain and suffering (against a concession of $100,000 and 63 years of post-traumatic stress symptoms).

The only two cases cited by the court in its decision were **Lopez v. Gomez** (2003) and **Carl v. Daniels** (2000), each of which we discussed previously, **here**. Each dealt with a youngster with a femur fracture ($1,500,000 affirmed for past pain and suffering in **Lopez**; $4,800,000 affirmed for past and future pain and suffering in **Carl**) and each seems relevant, though not dispositive.

Jones v. New York City Transit Authority involved a unique combination of injuries with reciprocal exacerbating effects. It may, therefore, turn out to be a case that's not oft-cited but it's clearly one that grabbed the attention of the jury and so impressed the jury, the trial judge and the appellate court that $3,000,000 was awarded and affirmed for pain and suffering in a non-catastrophic injury case. It deserves to be studied.