

Traumatic Brain Injury Pain and Suffering Verdict for 56 Year Old Man in Single Car Accident: \$2,100,000 New York Appeals Court Decision

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On December 19, 2000, on Gallupville Road in the Town of Duanesburg in Schenectady County, New York, 56 year old Vincenzo Popolizio lost control of the car he was driving slowly down a steep, snow covered incline as he approached a sharp curve. His car slid across the roadway (designed and maintained by the county) and landed in a deep drainage ditch. Upon impact, Mr. Popolizio struck his head on the windshield and sustained a traumatic brain injury (TBI).

Here is a car that rolled into an unguarded ditch, just like in this case:



A lawsuit against the County of Schenectady followed, with plaintiff claiming that the county was negligent in failing to safely design and maintain the roadway, failing to erect guardrails to prevent motorists from entering the ditch and building the ditch with an excessive and unsafe depth and slope. The jury agreed and despite the fact that it found plaintiff at fault for causing the accident to begin with, under settled legal principles the county was found 100% at fault for its negligence - where roadside hazards such as drainage ditches are inherently dangerous, a municipality has a duty to prevent cars from leaving the road or, if they do, to eliminate the danger.

The liability issue was hard fought and appealed but plaintiff won completely. The issue with which we are most concerned here at New York Injury Cases Blog is the pain and suffering award. The jury returned a verdict of **\$4,600,000** (\$1,000,000 past - 5 1/2 years, \$3,600,000 future - 23 years). On a post-trial motion directed to the trial judge, the verdict was reduced to \$1,600,000 (\$350,000 past, \$1,250,000 future). Both parties appealed claiming that the pain and suffering amounts were either too high (the defendant's claim) or too low (the plaintiff's claim). And then the appellate court weighed in at **\$2,100,000** - sustaining the trial judge's reduction of the \$1,000,000 past pain and suffering award to \$350,000 but increasing the future pain and suffering award to \$1,750,000 (the trial judge had reduced the jury's future award from \$3,600,000 to \$1,250,000).

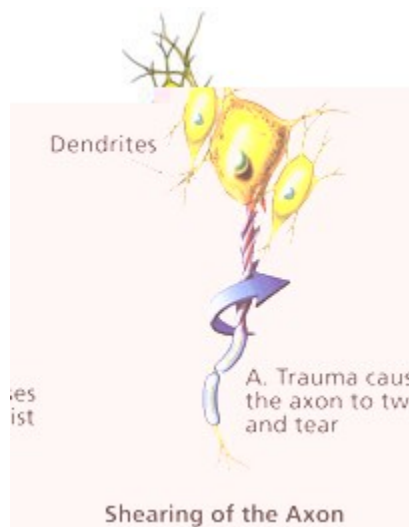
The appeals court decision ([Popolizio v. County of Schenectady](#)) gives the reader some information about what constituted plaintiff's TBI:

- IQ test shows **cognitive function bordering on mental retardation**
- must rely on others to run business
- takes little pleasure in sports and family activities
- **depression**

The foregoing factors mentioned by the appeals court do not give the full picture of the tragic consequences Mr. Popolizio suffered. Here are additional factors that no doubt weighed heavily in favor of the \$2,100,000 pain and suffering award:

- the defense doctor who examined the plaintiff noted that he presented with a "hang dog" appearance, with his head hanging down and looking very depressed and he diagnosed plaintiff with a **major and severe depressive disorder**
- plaintiff returned to work as a retail store manager for four hours a day but mostly moped around, didn't handle (because he couldn't) cash transactions and was according to co-employees nothing at all like the energetic, personable, interactive, popular man he had been for decades
- experts who tested the plaintiff concluded that his **cognitive function losses would never improve, nor would his severe depression**
- expert testimony that when plaintiff's head struck the windshield he suffered **bruising of dendrites and axons** that disrupted his neurological functioning

Here are dendrites in the brain and axons twisting and tearing from trauma:



This case did not involve any skull fractures or brain surgery, matters which are often present in TBI pain and suffering verdicts that exceed \$1,000,000. It was clearly the testimony of the medical experts (especially, psychological), as well as others such as co-workers and family members, that carried the day for the plaintiff and resulted in convincing the jury of the severity, seriousness, permanence and tragic nature of the brain injuries suffered by Mr. Popolizio. TBI is

often difficult to prove and its consequences difficult to effectively present to a jury. In this case, though, the plaintiff prevailed, not only with the jury but also on appeal.

We have a special interest in TBI cases and will report on other appeals court and trial level cases of interest as they are decided - including those that do not end up with seven figure recoveries. Additionally, readers are kindly referred to our [Brain Injury FAQ](#) site where questions about TBI and the law are answered and where we publish a new [National Verdict Tracker](#) reporting on brain injury verdicts and settlements from around the country.